

154 FERC ¶ 61,100
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Tony Clark.

Entergy Gulf States Louisiana, L.L.C.
Entergy Louisiana, LLC
Entergy New Orleans, Inc.

Docket No. ER15-1922-000

ORDER GRANTING WAIVER

(Issued February 18, 2016)

1. On June 15, 2015, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies,² submitted a request for limited waiver (Request for Waiver) of the Responsibility Ratio provision set forth in section 2.18 of the Entergy System Agreement to complete a Commission-approved transaction transferring Algiers assets from Entergy Louisiana to Entergy New Orleans.³ For the reasons discussed below, we grant Entergy's request for waiver, effective August 31, 2015, as requested.

¹ 18 C.F.R. § 207(a)(5) (2015).

² Entergy is a service company affiliate of the Entergy Operating Companies. The Entergy Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC (Entergy Louisiana), Entergy New Orleans, Inc. (Entergy New Orleans), Entergy Mississippi, Inc. (Entergy Mississippi), and Entergy Texas, Inc. Entergy Arkansas withdrew from the System Agreement effective December 18, 2013. Entergy Mississippi withdrew effective November 7, 2015. On December 29, 2015, the Commission approved a settlement agreement terminating the System Agreement effective August 31, 2016. *Entergy Ark., Inc.*, 153 FERC ¶ 61,347 (2015).

³ Entergy Request at 1.

I. Background

2. On December 10, 2014, as supplemented on February 11, 2015, in Docket No. EC15-48-000, Entergy filed with the Commission an application under section 203(a)(1) of the Federal Power Act⁴ for approval of a transfer of jurisdictional assets. In this transaction, Entergy Louisiana would transfer to Entergy New Orleans limited utility facilities in the Fifteenth Ward, known as Algiers, of the City of New Orleans, Louisiana (Algiers Asset Transfer). Entergy New Orleans provides retail electric service to retail customers throughout the City of New Orleans, subject to the retail jurisdiction of the Council of the City of New Orleans (Council) but, prior to the transaction, did not provide service to retail customers in Algiers. Instead, Entergy Louisiana provided service to retail customers in Algiers, subject to regulation by the Council, and provided (and still provides) service to retail electric customers in Louisiana outside of the City of New Orleans, subject to the jurisdiction of the Louisiana Public Service Commission (Louisiana Commission). As a result, Entergy Louisiana was subject to both the retail jurisdiction of the Council as well as the Louisiana Commission.⁵

3. In an order issued on April 3, 2015, the Commission approved the transfer of the jurisdictional components of the Algiers Asset Transfer as consistent with the public interest.⁶ These assets include approximately 8.3 miles of 115 kV and 230 kV transmission lines and two transmission substations.⁷ The Algiers Asset Transfer was consummated on September 1, 2015.⁸ Entergy Louisiana is now subject solely to the jurisdiction of the Louisiana Commission.

4. Entergy states that the System Agreement exists to allocate the costs and benefits of the coordinated operation of the Operating Companies' generation and transmission assets, completed via the Intra-System Bill. Entergy explains that Responsibility Ratios are used to allocate costs in the Intra-System Bill, such as for: (i) joint account purchases; (ii) MSS-1 and MSS-2 responsibilities; (iii) net balance on sales; and

⁴ 16 U.S.C. § 824b (2012).

⁵ Entergy Request at 2-3.

⁶ *Entergy La., LLC*, 151 FERC ¶ 62,019 (2015).

⁷ Entergy Request at 3.

⁸ Entergy Louisiana, LLC, Notice of Consummation, Docket No. EC15-48-000 (filed Sept. 4, 2015).

(iv) various Midcontinent Independent System Operator, Inc. charges. Entergy states that, pursuant to section 2.18 (Responsibility Ratios), Responsibility Ratios are calculated as a rolling average, for the 12 months ending with the current month, of each Operating Company's peak load coincident with the System's monthly peak load.⁹ Entergy states that these provisions allow for gradual changes to energy and cost allocation among the Operating Companies that vary in accordance with changes in overall System peak load.¹⁰

II. Entergy's Filing

5. In its initial filing, Entergy requests a limited waiver of section 2.18 (Responsibility Ratios) to provide for a one-time adjustment to the methodology used in the Intra-System Bill's calculation of Responsibility Ratios for Entergy New Orleans and Entergy Louisiana to reflect the Algiers Asset Transfer. Entergy contends that the load in Algiers already exists and is accounted for in the Responsibility Ratio calculation, and responsibility and cost for that load will immediately shift from Entergy Louisiana to Entergy New Orleans without phase-in upon closing. Entergy states that, through an agreement under Service Schedule MSS-4 of the System Agreement, Entergy New Orleans will be allocated 1.84 percent of the capacity and associated energy from Entergy Louisiana's existing generation portfolio to serve the load being transferred. Entergy New Orleans will receive a transfer of capacity to serve the Algiers load but, without waiver, the effect of the Algiers load on the Responsibility Ratio calculation would be phased-in over 12 months and create a mismatch in load and capacity in the Intra-System Bill.¹¹

6. Entergy proposes to reset the Entergy New Orleans and Entergy Louisiana Responsibility Ratios with a one-time adjustment to include an estimate for the Algiers load in the historical Entergy New Orleans calculation and corresponding removal from the Entergy Louisiana calculation to avoid this mismatch. Entergy explains that the Algiers load is not metered separately, so an estimate is required until its separate metering project in Algiers is completed. Entergy states that it will use the same process to estimate Algiers peak load for the reset as it used to identify the 1.84 percent level of the capacity transfer according to Service Schedule MSS-4 described above.

⁹ Entergy Request at 3-4.

¹⁰ *Id.* at 5.

¹¹ *Id.*

Entergy states that the Algiers load data will be trued-up when 12 months of load data are available and the Intra-System Bill rerun at that point.¹²

7. In his affidavit provided by Entergy, Patrick Cicio states that responsibility for developing the estimated Algiers peak load falls to Entergy's Rate Administration and Customer Load Department (Department). He explains that the Department used a stratified combined ratio analysis program that utilized load research sample interval data, sample and total class billing kWh, and sample strata weighing factors to develop the kW for the Entergy Louisiana classes. He states, additionally, that these data produced average demand for all hours in each month and that the monthly Entergy System peak demand times were also input into the analysis program. Mr. Cicio explains that the Algiers peak kW was estimated by class as a ratio of the Algiers class kWh to the Entergy Louisiana total class kWh. He notes that this is the same methodology used for cost-of-service studies as well as the same method used to determine the 1.84 percent level of Entergy Louisiana's capacity sold to Entergy New Orleans through a purchased power agreement under Service Schedule MSS-4 to assist in covering this addition to Entergy New Orleans' peak load.¹³

8. Mr. Cicio also states that Entergy has undertaken a metering project to include the Algiers load in the Entergy New Orleans load in the same manner as load is measured for the other Operating Companies. He states that this involves adding new transmission tie meters between Entergy Louisiana and Entergy New Orleans as well as 13 new distribution-level meters. Regarding the true-up, Mr. Cicio explains that the true-up will only occur when more precise Entergy New Orleans load data are available for a 12-month period and only if necessary. He states that, at that point, the Intra-System Bill will be rerun.¹⁴

9. Entergy argues that good cause exists for this waiver. Entergy contends that there is a concrete problem to be remedied because the 12-month phase-in would result in a mismatch under the System Agreement of load and capacity in the Intra-System Bill. Entergy next asserts that the waiver is of limited scope because it applies only to a one-time reset of the Entergy New Orleans and Entergy Louisiana Responsibility Ratios, after which the 12-month rolling coincident peak calculation of the Responsibility Ratio would resume. Entergy also argues that the waiver is necessary to ensure accurate billing and will cause no undesirable consequences because it will only improve billing

¹² *Id.* at 5-6.

¹³ Cicio Affidavit at 5-6.

¹⁴ *Id.* at 6.

accuracy. Entergy notes, moreover, that the waiver will only affect the Responsibility Ratios of Entergy Louisiana and Entergy New Orleans. Entergy requests an effective date of August 31, 2015, so that commencing with the calculation of the Responsibility Ratios for Entergy New Orleans and Entergy Louisiana following the closing of the Algiers Asset Transfer, the Responsibility Ratios will reset to an amount where load for the effected Operating Companies will instantaneously reflect the post-transaction structure of the Operating Companies.¹⁵

10. On November 5, 2015, Commission Staff issued a letter informing Entergy that its submittal was deficient and additional information was required to process its filing (Deficiency Letter). Commission Staff requested additional information related to: (1) actual estimated load data, work papers on the estimate, and work papers on the corresponding Responsibility Ratio calculations; (2) a narrative description of the estimated load data and Responsibility Ratio calculation; (3) the current status of the metering project; and (4) the Intra-System Bill rerun. On December 7, 2015, Entergy filed a response to the Deficiency Letter (Deficiency Letter Response).

11. In its Deficiency Letter Response, Entergy states that Attachment 1 contains the actual estimated load data and work papers on the estimate. In regards to the Responsibility Ratio calculations, Entergy further described the Responsibility Ratio calculation as follows:

In order to calculate the Responsibility Ratio, the first step is to develop the estimated Algiers peak load. The peak demand for the [Entergy Louisiana] classes was developed by a program that produced average hourly demands in each month. The hour in which the monthly Entergy system peak demands occurred was also input into the program to develop demand values during the monthly system peak. The Algiers peak demand was then estimated by class by calculating a ratio of the Algiers class usage (KWh) to the [Entergy Louisiana] total class usage (KWh).

Entergy notes that all of the data used in the demand calculations are provided in Attachment 1 and that Attachment 2 reflects the data used to derive the adjusted Responsibility Ratios.¹⁶

¹⁵ Entergy Request at 7-8.

¹⁶ Entergy Deficiency Letter Response at 2.

12. With respect to the metering project, Entergy states that the metering project was completed and all new meters were placed in-service in September 2015. Entergy explains that Mr. Cicio's comments about a true-up occurring if necessary were in reference to estimates for July and August 2015, for which June 2015 peak data was used as an estimate. In addition, Entergy notes that further review of other peak values determined that the peak date and hour for the other months were not all coincident with Entergy System peak as required by the System Agreement. Entergy also explains that minor meter corrections were made after the Request for Waiver that changed peak data. Lastly, on the issue of the Intra-System Bill rerun, Entergy states that the Intra-System Bill revisions using revised Algiers peak data will occur prior to the end of 2015 with any resulting payments or receipts occurring by the end of January 2016.¹⁷

III. Notice of Filing and Responsive Pleadings

13. Notice of the Request for Waiver was published in the *Federal Register*, 80 Fed. Reg. 35,644 (2015), with responsive pleadings due on or before July 6, 2015. On June 19, 2015, the Council filed a notice of intervention. On July 1, 2015, the Louisiana Commission filed a notice of intervention. On July 6, 2015, the Council and the Louisiana Commission filed comments in support of the Request for Waiver.

14. In their comments, although supporting the Request for Waiver, the Council and the Louisiana Commission note concerns about whether Entergy provided sufficient information on the estimate and true-up. The Louisiana Commission explains that it does not oppose the Request for Waiver but requests that reporting requirements be imposed on Entergy to allow for verification that Entergy's estimate and proposed true-up are performed correctly, as Entergy allegedly does not provide sufficient information. The Louisiana Commission requests a further compliance filing, when available, that provides: (i) the estimate for the Algiers load; (ii) work papers demonstrating the actual Responsibility Ratio calculations and changes after metering; (iii) updates on the status of the Algiers metering project; (iv) the true-up data to replace the estimate; and (v) the initial Intra-System Bill and the rerun Intra-System Bill, once actual data are available.¹⁸

15. The Council also requests more information from Entergy. The Council explains that Entergy's proposed method of estimating the Algiers peak load is reasonable, but Entergy provides insufficient detail regarding the true-up for the Commission to determine whether the true-up is reasonable. The Council states that it has concerns about: (i) when the true-up will be performed; (ii) when the Intra-System Bill will be

¹⁷ *Id.* at 4-5.

¹⁸ Louisiana Commission Comments at 1-3.

rerun; and (iii) over what period of time any additional payments resulting from the rerun will be billed to the Operating Companies and subsequently recovered from ratepayers. In particular, the Council is concerned that any rebilling under the true-up will occur in a single month. The Council requests that the Commission require further information on these issues from Entergy.¹⁹

16. Notice of Entergy's Deficiency Letter Response was published in the *Federal Register*, 80 Fed. Reg. 77,334 (2015), with responsive pleadings due on or before December 28, 2015. None were filed.

IV. Discussion

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention serve to make the entities that filed them parties to this proceeding.

18. For good cause shown, we grant Entergy's Request for Waiver of section 2.18 (Responsibility Ratios) of the System Agreement to allow a one-time reset of the Entergy New Orleans and Entergy Louisiana Responsibility Ratios to complete the Algiers Asset Transfer with an effective date of August 31, 2015, as requested. The Commission has granted waivers when the requesting party has shown that the waiver: (i) is of limited scope; (ii) remedies a concrete problem; and (iii) will not have undesirable consequences, such as harming third parties.²⁰

19. We find that these conditions have been satisfied here and the proposed load data and Responsibility Ratio estimate methods and the Intra-System bill true-up to be reasonable. First, the waiver is limited in scope because it applies only to a one-time reset of the Entergy New Orleans and Entergy Louisiana Responsibility Ratios for purposes of the Algiers Asset Transfer, after which the standard 12-month rolling coincident peak calculation of the Responsibility Ratio will resume. In addition, the waiver affects only Entergy New Orleans' and Entergy Louisiana's Responsibility Ratios and no other Operating Company's Responsibility Ratio. Second, the waiver remedies a concrete problem caused by the standard 12-month rolling average required by

¹⁹ Council Comments at 1-3.

²⁰ *Entergy Servs., Inc.*, 152 FERC ¶ 61,169 (2015). See also, e.g., *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 (2015); *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,098 (2014); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004 (2010); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007).

section 2.18, which results in a billing mismatch regarding load and capacity in the Intra-System Bill. Moreover, the methods used to create the estimate for July and August 2015 used actual peak data for June 2015, and actual load data were developed according to the same guidelines for September 2015 onward as the Algiers metering project has been completed.²¹ Third, the waiver will cause no undesirable consequences because its purpose and sole result is billing accuracy for the months of July and August 2015. We note that no party contested the timing of the true-up at the end of January 2016 after Entergy filed its Deficiency Letter Response. Accordingly, we grant the Request for Waiver.

20. With the addition of the Deficiency Letter Response, we find that Entergy has provided sufficient information in its filings to determine the reasonableness of the estimate and true-up. First, Entergy used a stratified combined ratio analysis program that utilized load research sample interval data, sample and total class billing kWh, sample strata weighting factors, and monthly Entergy system peak demand times to develop the kW for the Entergy Louisiana classes.²² Next, the Algiers peak kW was estimated by class as a ratio of the Algiers class kWh to the Entergy Louisiana total class kWh.²³ Both Entergy and Mr. Cicio explain that the Department's estimate for Algiers peak load will use the same 1.84 percent level used in the capacity transfer level from Entergy Louisiana to Entergy New Orleans under Service Schedule MSS-4 to transfer load from Entergy Louisiana to Entergy New Orleans.²⁴ Additionally, Entergy notes that the Algiers metering project was completed in September 2015, and for July and August 2015, peak data will be calculated using the above formula. Entergy also states that the Intra-System Bill will be updated using revised Algiers peak data at the end of 2015, with any resulting payments or receipts occurring by the end of January 2016.²⁵ We encourage Entergy to work with state regulators during the true-up process to keep them informed, as necessary.

²¹ Entergy Deficiency Letter Response at 2-4.

²² Cicio Affidavit at 5. *See also* Entergy Deficiency Letter Response at 2.

²³ Cicio Affidavit at 5-6.

²⁴ Entergy Request at 5; Cicio Affidavit at 6. *See also* Entergy Deficiency Letter Response at 2.

²⁵ Entergy Deficiency Letter Response at 5.

The Commission orders:

The Request for Waiver is hereby granted, effective August 31, 2015, as requested, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.