

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28036; 70-10334)

Entergy Corporation, et al.

Order Authorizing Issuance and Sale of Secured Debtor-in-Possession Short-Term Securities by Utility Subsidiary; Acquisition of Securities by Holding Company

September 26, 2005

Entergy Corporation (“Entergy”), New Orleans, LA, a registered holding company under the Public Utility Holding Company Act of 1935, as amended (“Act”); and Entergy’s direct public utility subsidiary Entergy New Orleans, Inc. (“New Orleans”), New Orleans, LA (collectively, “Applicants”) have filed an application-declaration (“Application”) with the Securities and Exchange Commission (“Commission”) under sections 6(a), 7, 9(a), 10, 12(b) and 20 of the Act and rules 45 and 54 under the Act.

I. Background

New Orleans is a combination electric and gas utility that serves approximately 190,000 electric and 147,000 gas customers in Orleans Parish, including the City of New Orleans, Louisiana (“City”). On September 23, 2005, New Orleans filed a petition for relief under Chapter 11 of the United States Bankruptcy Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Louisiana. New Orleans is continuing in possession of its properties and has continued to operate its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committee has yet been appointed to this Chapter 11 case. The bankruptcy petition was precipitated by the unanticipated and devastating impact of Hurricane Katrina, which destroyed substantial portions of New Orleans’ facilities, disrupted its

revenues, and, with the evacuation of the City, eliminated at least in the short term, the quality of its rate base, which is directly linked to the fortunes of the City. New Orleans' most pressing concern, and the immediate cause of its bankruptcy filing, is the liquidity crisis resulting from the hurricane's severe disruption to operations. New Orleans estimates that over one hundred thousand of its customers are presently unable to accept electric and gas service, and will remain unable to accept service for a period of time that cannot yet be determined. Other customers in the New Orleans area who have had their utility services restored have been displaced by Hurricane Katrina. The ordinary cycle of customer payment of utility bills has been shattered. As a result, New Orleans' cash receipts have been significantly below normal levels since the hurricane.

New Orleans' need to make cash payments has continued, however, primarily due to obligations under fuel and purchased power contracts. New Orleans also faces extraordinary storm restoration costs, as it struggles to restore service to the City and maintain the safety and security of its operations. Given the devastating impact on its own resources, New Orleans lacks sufficient liquidity to meet these ongoing obligations.

II. Requested Authorizations

Accordingly New Orleans, as debtor-in-possession, and Entergy are requesting an emergency order from the Commission (i) granting authority to enter into a \$200 million credit facility ("Credit Facility") pursuant to which New Orleans may initially borrow from time to time up to \$150 million from Entergy in order to meet its immediate cash needs; and (ii) modifying two outstanding Commission orders so as to eliminate the requirement that New Orleans maintain common equity of at least 30% of its

consolidated capitalization and investment grade credit ratings.¹ Applicants request that the Commission grant the authority through February 8, 2006.²

III. Description of the Credit Facility

A. Terms

New Orleans will be able to make borrowings under the Credit Facility, in an amount of up to \$150 million from time-to-time. The borrowings will be payable within one year. The borrowings by New Orleans will be secured and will bear interest at a rate equal to Entergy's effective cost of short-term borrowings, which is currently estimated to be approximately 4.6% per annum.

With the approval of the Bankruptcy Court, upon borrowing under the Credit Facility, New Orleans will provide Entergy with a (i) a lien on any unencumbered assets; and (ii) a junior lien on any assets subject to existing liens.³ New Orleans' pre-petition debt structure is primarily composed of six series of first priority mortgage bonds in the

¹ See Entergy Corporation, Holding Company Act Release No. 27864 (June 30, 2004) and Entergy Corporation, et al., Holding Company Act Release No. 27918 (November 30, 2004).

² The Energy Policy Act of 2005 repealed the Public Utility Holding Company Act of 1935, effective February 8, 2006.

³ New Orleans has filed a motion with the Bankruptcy Court for entry of an interim order (i) authorizing New Orleans to enter into the Credit Facility; (ii) granting adequate protection to certain pre-petition secured parties; and (iii) scheduling a final hearing on the motion. At the final hearing, the Applicants will seek a final order that will include among other things, the priming of certain pre-petition secured parties' liens. If a priming lien is granted by the Bankruptcy Court as part of its final order, then any advances under the Credit Facility will also have the benefit of the priming lien retroactively. Applicants represent that New Orleans will file a separate application with the Commission under section 6(a)(2) of the Act to request authorization for any modifications or alterations to the priorities or preferences of the holders of outstanding secured debt of the company, and to borrow the remaining \$50 million under the Credit Facility.

aggregate principal amount of \$230 million, ranging in maturity dates from August 1, 2008 to September 1, 2029 (collectively, “Mortgage Bonds”). The Mortgage Bonds are secured by first priority liens on, and security interests in, all real and personal property of New Orleans, including all equipment and fixtures, but does not include cash, accounts receivable, mineral rights, general intangibles, and all products or materials generated by New Orleans in the ordinary course of business, including electric energy and gas.

New Orleans has traditionally had two sources of financing to meet its short-term liquidity needs: (i) a \$15 million, 364-day bank credit facility (“Bank Facility”) which is secured by New Orleans’ accounts receivable; and (ii) borrowings from Entergy’s inter-company money pool (“Money Pool”).

However, the Bank Facility is fully drawn, and New Orleans’ articles of incorporation limit its unsecured borrowings from the Money Pool to no more than \$42 million as of August 31, 2005. New Orleans’ borrowings under the Money Pool were approximately \$23 million as of September 23, 2005. New Orleans will not make any further borrowings under the Money Pool. At this time, New Orleans has no access to additional working capital other than through the proposed Credit Facility.

Given the impact of Hurricane Katrina on New Orleans’ existing plant and property, New Orleans believes that the interests of its pre-petition secured creditors are adequately protected, because the borrowings under the Credit Facility will be used to preserve and enhance the value of New Orleans’ assets, which otherwise could have little value.

In the absence of immediate access to the Credit Facility, New Orleans could be compelled to curtail or even terminate its business operations – to the material detriment

of its creditors, customers, employees and other parties in interest. The Credit Facility will enable New Orleans to meet its working capital shortfall in the immediate future.

B. Use of Proceeds

The proceeds to be received by New Orleans will permit the orderly continuation of its business operations and allow it to: (i) pay its vendors and suppliers, including a payment on September 26, 2005 of approximately \$36 million to fuel suppliers; (ii) make payroll; (iii) make capital expenditures; and (iv) satisfy other working capital and operational needs.

IV. Modification of Existing Commission Orders

As a result of New Orleans' deteriorating financial condition, both Standard & Poor's Rating Services ("S&P") and Moody's Investors Service, Inc. ("Moody's") have downgraded its senior secured debt to below investment grade. In addition, on a pro forma basis, taking into account the borrowing up to \$150 million under the Credit Facility, common equity as a percentage of New Orleans' total capitalization will be reduced to below 30%.⁴

Under the terms of the Commission's order dated November 11, 2004 (Holding Company Act Release No. 27918) ("Money Pool Order"), New Orleans has committed that it will maintain common equity as a percentage of consolidated capitalization, including short-term debt and current maturities of long-term debt, at 30% or higher. In addition, New Orleans is restricted under the Money Pool Order from making any borrowings (other than borrowings under the Money Pool) unless, at the time of a

⁴ At June 30, 2005, and taking into account adjustments since then, including the borrowings requested under the Credit Facility, New Orleans' capitalization will consist

borrowing, all of its outstanding securities that are rated are rated investment grade by at least one of the nationally recognized ratings organizations (“Investment Grade Ratings Test”).

Under the terms of the Commission’s order dated June 30, 2004 (Holding Company Act Release No. 27864) (“Omnibus Financing Order”), Entergy may not issue any securities (other than common stock) unless, at the time of the issuance, common equity as a percentage of total capitalization of Entergy and of each of its public utility subsidiaries is 30% or higher.⁵

Entergy and New Orleans request that the Commission modify the Money Pool Order to eliminate the 30% common equity test and the Investment Grade Ratings Test as applied to New Orleans, and modify the Omnibus Financing Order to eliminate the 30% common equity test solely as it relates to New Orleans.

V. Miscellaneous

Expenses to be incurred by the Applicants in connection with filing this Application are estimated not to exceed \$200,000, including \$150,000 estimated for legal fees and \$50,000 estimated for the fees of Entergy Services, Inc.

The proposed transactions are subject to rule 54 of the Act. Rule 54 provides that in determining whether to approve transactions by a registered holding company or its subsidiaries other than with respect to exempt wholesale generators (“EWGs”) or foreign

of 27.7% common equity, 3.2% preferred equity, 36.8% long-term debt and 32.3% short-term debt.

⁵ Entergy’s corporate rating by S&P is BBB and its issuer rating by Moodys is Baa3. In addition, at June 30, 2005, and taking into account the effect of subsequent financing activity, including anticipated borrowings to be made by Entergy to fund up to \$150 million under the Credit Agreement, common equity of Entergy will equal approximately 44.9% of its consolidated capitalization.

utility companies (“FUCOs”) (collectively, “Exempt Projects”), the Commission shall not consider the effect of the capitalization or earnings of EWG or FUCO subsidiaries on the registered holding company if paragraphs (a), (b) and (c) of rule 53 are satisfied.

Applicants state that all of the criteria of rule 53(a) and (b) are currently satisfied, except for rules 53(a)(1)⁶ and 53(b)(1). The criteria of rule 53(b)(1) is not satisfied because the book value of New Orleans’ assets exceeded 10% of Entergy’s “consolidated retained earnings” as of June 30, 2005 and New Orleans has filed for bankruptcy.

However, Applicants state that even though Entergy is not in compliance with Rule 54 as a result of the circumstances set forth in rule 53(b)(1) having arisen with respect to New Orleans, if the Commission were to consider (as required under Rule 53(c)) the effect upon the Entergy system of the capitalization and earnings of Exempt Projects in which Entergy has an ownership interest, there would be no basis for the Commission to withhold or deny approval for the relief requested in the Application.

Applicants state that for the following reasons, the action requested in the Application, considered in conjunction with the effect of the capitalization and earnings of Entergy’s Exempt Projects, (i) would not have a material adverse effect on the

⁶ With respect to rule 53(a)(1), Entergy’s “aggregate investment” in Exempt Projects (approximately \$2.9 billion) is equal to approximately 57% of Entergy’s “consolidated retained earnings” as of June 30, 2005 (approximately \$5.0 billion). Entergy’s aggregate investment in Exempt Projects currently exceeds the 50% limitation in rule 53(a)(1) as a result of increased investments in EWGs relating to the acquisition and/or construction of “eligible facilities” (as defined in section 32 under the Act). Although Entergy’s current aggregate investment in EWGs and FUCOs exceeds the limit specified in rule 53(a)(1), by order dated June 13, 2000 (Holding Company Act Release No. 27184) (“June 2000 Order”), the Commission authorized Entergy to make investments in amounts up to 100% of its consolidated retained earnings in Exempt Projects and, therefore, Entergy’s aggregate investment in Exempt Projects is within the parameters authorized in the June 2000 Order.

financial integrity of the Entergy system, and (ii) would not have an adverse impact on Entergy's public-utility companies or their customers:

1. As of June 30, 2005, Entergy's aggregate investment in Exempt Projects was equal to 17% of Entergy's total consolidated capitalization, 15% of consolidated net utility plant and 18% of the market value of Entergy's common stock. As of March 31, 2000 (the most recent calendar quarter preceding the June 2000 Order), Entergy's aggregate investment in Exempt Projects was equal to 7% of Entergy's total capitalization, 7% of Entergy's consolidated net utility plant and 24% of the market value of Entergy's outstanding common stock.
2. Entergy's consolidated retained earnings have grown by an average of 12% annually during the period since the Commission issued its June 2000 Order (i.e., from June 30, 2000 through March 31, 2005).
3. Income from Entergy's investments in Exempt Projects has contributed positively to its overall earnings during the period since the Commission issued the June 2000 Order.
4. As of March 31, 2000 (the most recent calendar quarter preceding the June 2000 Order), Entergy's consolidated capitalization ratio was approximately 50.0% debt and approximately 50.0% equity, consisting of approximately 5.0% preferred stock and approximately 45.0% common stock. As of June 30, 2005, Entergy's consolidated capitalization ratio was approximately 50.6% debt and approximately 49.4% equity, consisting of approximately 2.3% preferred stock and approximately 47.1% common stock. These ratios are within industry ranges set by the independent debt rating agencies for BBB-rated electric utility companies.
5. As of the date of this Application, each of the considerations set forth in the June 2000 Order, in support of Entergy's assertion that its existing and proposed level of investment in Exempt Projects would not have an adverse impact on any Entergy operating utility subsidiaries (including New Orleans) or their ratepayers, or on the ability of interested state commissions to protect the utilities and their customers, continues to apply.

Therefore, despite the failure to meet the condition of rule 53(b)(1) as a result of the bankruptcy of New Orleans, Entergy states that, in accordance with rule 53(c), the transactions proposed in the Application (i) will not have a substantial adverse impact upon Entergy's financial integrity, and (ii) will not have an adverse impact on Entergy's

utility subsidiaries, their customers or on the ability of Entergy's state and local regulators to protect the subsidiaries or customers.⁷

Except to the extent otherwise authorized in the June 2000 Order, in any supplemental order issued in this proceeding or any other subsequent order issued by the Commission, Entergy represents that it will maintain compliance with all of the conditions of Rule 53.

VI. Statutory Analysis

A. Sections 6 and 7 of the Act

New Orleans' issuance of secured debt under the Credit Facility is governed by sections 6 and 7 of the Act. Section 6(a) prohibits a subsidiary of a registered holding company from issuing or selling securities unless the transaction has been authorized by the Commission under section 7. Section 7(c)(1) sets forth the kinds of securities that may be issued.⁸ The securities proposed to be issued do not come within the provisions of section 7(c)(1). Section 7(c)(2)(D), however, provides an exception for securities not specified in section 7(c)(1) if the Commission finds that the security is to be issued or

⁷ Furthermore, the Entergy system has complied with, and will continue to comply with, the record keeping requirements of rule 53(a)(2), the limitation in rule 53(a)(3) on the use of Entergy system domestic public utility subsidiary companies' personnel in rendering services to affiliated EWGs and FUCOs, and the requirements of rule 53(a)(4) concerning the submission of certain filings and reports under the Act to retail regulatory commissions. Finally, other than rule 53(b)(1), none of the conditions set forth in rule 53(b) (under which the safe harbor provisions of rule 53 would not be available) currently exists. Specifically, (i) Entergy's average consolidated retained earnings for the four most recent quarterly periods have not decreased by 10% from the average for the previous four quarterly periods, and (ii) Entergy did not report operating losses in its previous fiscal year attributable to its investments in Exempt Projects in excess of 5% of Entergy's consolidated retained earnings.

⁸ Section 7(c)(1) contemplates that the security will be a common stock; secured bond; guarantee of, or assumption of liability on, a security of another company; or a receiver's or trustee's certificate.

sold solely for the necessary and urgent corporate purposes of the Applicant where the requirements of section 7(c)(1) would impose an unreasonable financial burden on the Applicant and are not necessary or appropriate in the public interest or for the protection of investors or consumers.

New Orleans intends to use the funds from borrowings under the Credit Facility to pay vendors and suppliers, including a \$36 million payment due today, to make payroll and capital expenditures and to satisfy other working capital and operational needs. The need to fund operations is particularly acute given New Orleans' severe liquidity crisis. New Orleans has no other sources of financing available to it, and the destruction of a substantial portion of its facilities caused by Hurricane Katrina has significantly affected cash receipts. Because the types of financings contemplated by section 7(c)(1) would impose an unreasonable financial burden on New Orleans and under the current circumstances, the requirements of section 7(c)(1) are not necessary or appropriate in the public interest or for the protection of investors or consumers. Allowing New Orleans to maintain a functioning enterprise and rebuild its system benefits not only the investors in New Orleans and Entergy, but also employees, customers, and the communities served by the Applicants.

Section 7(d) reflects Congress' broad concern that a financing be appropriate to the capital structure of the Applicant and other companies in the system.⁹ In this matter

⁹ Specifically, section 7(d) provides that if the requirements of sections 7(c) (concerning the type of security to be issued) and 7(g) (concerning any necessary state approval) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission makes certain specified adverse findings, including, most importantly, if: (i) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding-company system [section 7(d)(1)]; (ii) the security is not reasonably adapted to the earning power

New Orleans is a debtor-in-possession under Chapter 11. The proposed transaction is intended as a first step in the company's efforts to return to financial health. Further, although as a matter of regulatory policy the Commission has generally favored a minimum consolidated common equity capital component of 30% and required that an issuer have investment grade ratings, the Commission has recognized that compelling circumstances like the ones that exist in this matter warrant a relaxation of that policy in order to satisfy emergency liquidity needs and prevent unnecessary harm to utility operations, investors, employees, customers, and communities served.¹⁰

B. Section 9, 10 and 12(b) of the Act

In addition, sections 9, 10 and 12(b) of the Act are applicable to the proposed transaction.¹¹ The Commission finds that the standards of these sections are satisfied. In particular, we note that Entergy is subject to the terms and conditions of an outstanding

of the declarant [section 7(d)(2); or (iii) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest [section 7(d)(3)].

In addition, the declaration may not become effective if the Commission finds that: the fees, commissions or other remuneration paid directly or indirectly in connection with the financing are not reasonable [section 7(d)(4)]; or, in the case of a security that is a guarantee, the circumstances are such as to constitute the making of the guarantee an improper risk for the declarant [section 7(d)(5)]; and the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers [section 7(d)(6)].

Absent any adverse findings under section 7(d), section 7(f) of the Act permits the Commission's order "to contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section."

¹⁰ See, e.g., The Columbia Gas System, Inc., Holding Company Act Release No. 25363 (August 20, 1991).

¹¹ Sections 9(a)(1) and 10 govern the acquisition of securities by Entergy. Section 12(b) applies to intersystem loans.

order authorizing it to engage in certain financing transactions.¹² The acquisition of securities issued by New Orleans will serve the public interest by tending towards the economical and efficient development of an integrated public utility system, as required by section 10(c)(2).

C. Section 20

Section 20 allows the Commission to issue orders when necessary on an emergency basis without notice.¹³

Applicants state that no state regulatory body or agency and no Federal commission or agency other than the Commission has jurisdiction over the proposed transaction. New Orleans requires the approval of the United States Bankruptcy Court for the Eastern District of Louisiana in order to enter into and carry out the transactions described in the Application.

VII. Conclusion

Upon the basis of the facts in the record the Commission finds that the applicable standards of the Act and rules are satisfied and that no adverse findings are necessary.

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.¹⁴

¹² Specifically, Entergy must maintain investment grade credit ratings and common equity of at least 30% of its consolidated capitalization. Entergy Corporation, Holding Company Act Release No. 27864 (June 30, 2004).

¹³ Hydro-Quebec, et. al., Holding Company Act Release No. 27713 (August 15, 2003)

¹⁴ Cf. Hydro-Quebec, et. al., Holding Company Act Release No. 27713 (August 15, 2003); and Order Under Sections 20(A) and 20(B) of the Public Utility Holding Company Act of 1935 Granting Exemptions from Certain Provisions of the Act and Rules Thereunder, Holding Company Act Release No. 27502 (March 18, 2002).

Accordingly, IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that the Application of Entergy be granted and permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

By the Commission.

Jonathan G. Katz
Secretary