**SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 35-28056; 70-10202)**

**Entergy Corporation**

**Order Authorizing the Continuation of the Issue and Sale of Securities to Finance the Acquisition of the Securities of Exempt Wholesale Generators and Foreign Utility Companies**

**November 1, 2005**

Entergy Corporation ("Entergy"), New Orleans, LA, a registered holding company under the Public Utility Holding Company Act of 1935, as amended ("Act"), has filed post-effective amendment to its original declaration/application ("Amended Declaration") under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and rules 46, 53, and 54 under the Act. The Commission issued a notice of the Amended Declaration on October 5, 2005 (Holding Company Act Release No. 28043). No request for a hearing was received by the Commission.

## I. Background

By order dated June 30, 2004 (Holding Company Act Release No. 27864; File No. 70-10202) ("2004 Order") Entergy was authorized, among other things, to issue securities to finance the acquisition of securities of exempt wholesale generators ("EWG") and foreign utility companies ("FUCOs") (collectively, "Exempt Projects"), as long as the "aggregate investment" (as defined in rule 53 of the Act) did not exceed 100% of Entergy's consolidated retained earnings.[1]

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[1] See also, Holding Company Act Release No. 27039 (File No. 70-9123) (June 22, 1999) ("Original Order") in which the Commission authorized Entergy, among other things, to finance its investments in Exempt Projects by providing guarantees and other forms of credit support and issuing securities to finance the acquisition of the securities of Exempt Projects in an aggregate amount not to exceed $750 million; and Holding

The transactions approved in the 2004 Order were subject to the provisions of rule 54 under the Act. Rule 54 provides that, in determining whether to approve the issue or sale of any securities for purposes other than the acquisition of any Exempt Projects, or other transactions unrelated to Exempt Projects, the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or FUCOs if the requirements of rule 53(a), (b) and (c) are satisfied.[2]

In the Amended Declaration, Entergy states that it is no longer in compliance with rule 53(b)(1), as discussed below.[3] Accordingly, Entergy requests authority to

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Company Act Release No. 27184 (File No. 70-9049) (June 13, 2000) ("2000 Order") in which the Commission modified the Original Order and authorized Entergy, among other things, to issue securities to finance the acquisition of securities of Exempt Projects or to guarantee or provide other forms of credit support to Exempt Projects as long as its "aggregate investment" (as defined in rule 53 of the Act) in the Exempt Projects did not exceed 100% of its consolidated retained earnings.

[2] Under rule 53(a), the Commission shall not make certain specified findings under sections 7 and 12 of the Act in connection with a proposal by a holding company to issue securities for the purpose of acquiring the securities of, or other interest in, an EWG or FUCO, or to guarantee the securities of an EWG or FUCO, if each of the conditions in paragraphs (a)(1) through (a)(4) are met, provided that none of the conditions specified in paragraphs (b)(1) through (b)(3) of rule 53 exists.

[3] Entergy states that all of the other criteria of rule 53(a) and (b) are satisfied, except with respect to rule 53(a)(1). However, Entergy states that while its "aggregate investment" in Exempt Projects exceeds the 50% of consolidated retained earnings limitation of rule 53(a)(1), Entergy is in compliance with the 2000 Order which allows Entergy to invest up to 100% of its consolidated retained earnings in Exempt Projects. As of June 30, 2005, Entergy's aggregate investment in Exempt Projects was approximately $2.9 billion and was equal to approximately 57% of Entergy's consolidated retained earnings of approximately $5 billion.

Entergy states that it 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 Exempt Projects, and the requirements of rule 53(a)(4) concerning the submission of certain filings and reports under the Act to retail regulatory commissions.

continue to issue securities to finance the acquisition of the securities of Exempt Projects in an aggregate amount not to exceed 100% of Entergy's "consolidated retained earnings," as specified in the 2000 Order. However, in accordance with rule 53(c), Entergy must affirmatively demonstrate that the issue and sale of a security to finance the acquisition of an Exempt Project will not have a substantial adverse impact upon the financial integrity of its system, and will not have an adverse impact on any utility subsidiary, its customers or on the ability of State commissions to protect the utility subsidiary or its customers.

## II. Rules 53(b)(1) and 53(c)

A. Rule 53(b)(1)

Rule 53(b)(1) states that the safe harbor provided by the rule generally is not available if: (1) the registered holding company or any subsidiary company having assets with book value exceeding 10% or more of consolidated retained earnings has been the subject of a bankruptcy proceeding; (2) the average consolidated retained earnings for the four most recent quarterly periods have decreased by 10% from the average for the previous four quarterly periods and the aggregate investment in EWGs and FUCOs exceeds two percent of total capital invested in utility operations; or (3) in the previous fiscal year, the registered holding company reported operating losses attributable to its

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Finally, none of the other conditions set forth in rule 53(b) currently exists. Specifically, as required by rule 53(b)(2), Entergy's average consolidated retained earnings for the four quarterly periods ended June 30, 2005 have not decreased by 10% from the average for the previous four quarterly periods, and, as required by rule 53(b)(3), 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.

direct or indirect investments in EWGs and FUCOs, and the losses exceed an amount equal to 5% of consolidated retained earnings.

On September 23, 2005, Entergy New Orleans, Inc. ("ENO"), a public utility subsidiary of Entergy, filed the Voluntary Petition for relief under Chapter 11 of the U.S. Bankruptcy Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Louisiana. The book value of ENO's assets exceeded 10% of Entergy's "consolidated retained earnings" as of June 30, 2005. Consequently, Entergy is no longer in compliance with rule 53(b)(1).

The Voluntary Petition was precipitated by the unanticipated and devastating impact of Hurricane Katrina, which destroyed substantial portions of ENO's facilities, disrupted its revenues, and, with the evacuation of the City of New Orleans ("City"), eliminated at least in the short term, the quality of ENO's customer base, which is directly linked to the fortunes of the City. ENO 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.[4]

ENO's most pressing concern, and the immediate cause of its Voluntary Petition, is the liquidity crisis resulting from the hurricane's severe disruption to its operations. ENO estimates that 87,000 of its customers are presently unable to accept electric 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

[4] On September 26, 2005, the Commission issued an emergency order (Holding Company Act Release No. 28036) authorizing Entergy and ENO to enter into a secured $200 million credit facility and allowing ENO to borrow up to $150 million under the credit facility. In addition the order modified two outstanding orders, eliminating the requirements that ENO maintain common equity of at least 30% of its consolidated capitalization and investment grade credit ratings.

services restored have been displaced by Hurricane Katrina. The ordinary cycle of customer payment of utility bills has been shattered. As a result, ENO's cash receipts have been significantly below normal levels since the hurricane.

B. Rule 53(c)

In accordance with rule 53(c), Entergy believes that the transactions authorized in the 2004 Order (to the extent they involve the issuance of securities by Entergy to finance the acquisition of securities of Exempt Projects), (1) will not have a substantial adverse impact upon Entergy's financial integrity and (2) will not have an adverse impact on Entergy's utility subsidiaries (including ENO and Entergy Gulf States, Inc. ("EGSI")), their customers or on the ability of Entergy's state and local regulators to protect the subsidiaries or customers. In support of its position, Entergy states that:

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 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 the 2000 Order (i.e., from June 30, 2000 through June 30, 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 2000 Order through June 30, 2005.

4. As of March 31, 2000 (the most recent calendar quarter preceding the 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 the Amended Declaration each of the considerations set forth in the 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 or their ratepayers, or on the ability of interested state commissions to protect the utilities and their customers, continues to apply.

6. Entergy's commitment of capital to the Exempt Projects will not harm Entergy's public-utility subsidiaries because, other than the debtor-in possession financing for ENO, as it may be expanded by order of the Commission and increased common stock investment in EGSI to maintain common equity at an acceptable level of total capitalization, Entergy's public-utility company subsidiaries expect to fund their operations primarily from internal sources of cash and from sales of securities to third parties over the period October 1, 2005 through the end of January, 2006. After the debt

and equity infusions in ENO and EGSI, Entergy will have significant financing capacity available under the Commission authorization in the 2004 Order for additional investments in its public utility company subsidiaries.

**III. Miscellaneous**

The estimated fees, commissions and expenses expected to be paid or incurred, directly or indirectly, in connection with the matters described in this Amended Declaration are estimated to be not more than $10,000, including fees of counsel not to exceed $7,000 and fees of Entergy Services, Inc. not to exceed $3,000. Entergy states that no state or federal commission, other than this Commission, has jurisdiction over the transactions proposed in the Amended Declaration.

Due notice of the filing of the Amended Declaration has been given in the manner prescribed by rule 23 under the Act, and no hearing has been requested of, or ordered by the Commission. Based on the facts in the record, the Commission finds that the applicable standards of the Act are satisfied and that no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that the Amended Declaration of Entergy (70-10202) be granted and permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz
Secretary