

## **SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 35-28072; 70-10335)**

**Entergy Corporation, *et al.***

**Order Authorizing Additional Debtor-in-Possession Financing in an Amount of Up to \$50 Million**

**December 7, 2005**

Entergy Corporation (“Entergy”), 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”), each located in New Orleans, LA (together, “Applicants”), have filed an amended application/declaration (“Application”) under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 under the Act. The Commission issued a notice of the Application on November 7, 2005 (Holding Company Act Release No. 28058). No request for a hearing was received.

### **I. Background**

New Orleans serves electric and gas customers in Orleans parish, including the City of New Orleans, Louisiana (“City”). On September 23, 2005, New Orleans filed a petition (“Voluntary 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 (“Bankruptcy Court”). The Voluntary 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 New Orleans’ rate base, which is directly linked to the fortunes of the City. 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.

By order dated September 26, 2005 (Holding Company Act Release No. 28036) (“Original Order”) Entergy and New Orleans were authorized, among other things,<sup>1</sup> to enter into a \$200 million credit agreement (“Credit Facility”) under which New Orleans could borrow up to \$150 million from Entergy in order to enable New Orleans to pay its vendors and suppliers, including a payment on September 26, 2005, of approximately \$36 million to fuel suppliers, to make payroll, to make capital expenditures, and to satisfy other working capital and operational needs.

All borrowings by New Orleans under the Credit Facility are secured by a first lien on all unencumbered property of New Orleans and a junior lien on property subject to existing liens, including liens under a mortgage and deed of trust dated as of May 1, 1987 with the Bank of New York as successor trustee and Stephen J. Giurlando as successor co-trustee, and a loan agreement effective as of July 6, 2004 and a security agreement effective July 2005 between Hibernia National Bank and New Orleans.

Borrowings under the Credit Facility must be repaid by New Orleans not later than August 23, 2006 and bear interest at a rate, calculated daily, equal to Entergy’s effective cost of funds rate (currently approximately 4.6%), as determined under a credit agreement between Entergy and Citibank, N.A., as administrative agent.

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<sup>1</sup> Under the Original Order, the Commission also modified the terms of two outstanding Commission orders eliminating the requirement that New Orleans maintain common equity of at least 30% of its total capitalization and maintain investment grade credit ratings on securities of New Orleans that are rated. See Holding Company Act Release No. 27864 (June 30, 2004) and Holding Company Act Release No. 27918 (November 30, 2004).

## **II. Requested Authorization**

New Orleans' has borrowed \$100 million under the Credit Facility. However, Applicants state that they anticipate that New Orleans will require funding under the Credit Facility in an aggregate amount in excess of the \$150 million authorized under the Original Order. Therefore, Applicants request that the Commission increase New Orleans' authority to borrow from Entergy under the Credit Facility by \$50 million, to allow it to borrow up to \$200 million aggregate principal amount<sup>2</sup> from time to time through February 8, 2006.<sup>3</sup>

## **III. Rule 54 Analysis**

The proposed transaction is subject to rule 54. 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 wholesale generator" ("EWG") or "foreign utility company" ("FUCO") or other transactions unrelated to EWGs or FUCOs (collectively, "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. Under rule 53(a), the Commission shall not make certain specified findings under sections 7 and 12 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 to guarantee the securities of an EWG, if

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<sup>2</sup> On September 26, 2005, the Bankruptcy Court entered an interim order authorizing New Orleans to borrow up to \$100 million under the Credit Facility, until entry of the final order in the proceeding, and to execute, deliver and perform the Credit Facility. On October 26, 2005, the Bankruptcy Court authorized New Orleans to increase its borrowing limit to up to \$200 million under the Credit Facility.

<sup>3</sup> The Energy Policy Act of 2005 repealed the Public Utility Holding Company Act of 1935, effective February 8, 2006.

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.

Entergy represents that, pursuant to rule 54 under the Act, (1) for the reasons discussed below, the condition set forth in rule 53(a)(1) that Entergy's "aggregate investment" in Exempt Projects not exceed 50% of Entergy's "consolidated retained earnings" is not currently satisfied, and (2) for the reasons discussed below, the condition set forth in rule 53(b)(1) is not currently satisfied, and (3) all of the other criteria of rule 53(a) and (b) are currently satisfied.

With respect to the condition set forth in rule 53(a)(1), Entergy's "aggregate investment" in Exempt Projects (approximately \$3.6 billion) is equal to approximately 70% of Entergy's "consolidated retained earnings" as of September 30, 2005 (approximately \$5.4 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 Exempt Projects 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.

With respect to the condition set forth in rule 53(b)(1), on September 23, 2005, New Orleans filed the Voluntary Petition. The book value of New Orleans' assets

exceeded 10% of Entergy's "consolidated retained earnings" as of June 30, 2005.

Consequently, the circumstances described in rule 53(b)(1) have occurred.

As a result of the circumstances set forth in rule 53(b)(1) having arisen with respect to New Orleans, Entergy is no longer in compliance with the safe harbor provisions of rule 53 (as modified by the June 2000 Order). However, in accordance with the requirements of rule 53(c), Entergy believes that the transactions proposed in the Application (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, their customers or on the ability of Entergy's state and local regulators to protect their subsidiaries or customers. In support of this position, Entergy provides the following information:

(1) As of September 30, 2005, Entergy's aggregate investment in Exempt Projects was equal to 21% of Entergy's total consolidated capitalization, 19% of consolidated net utility plant and 23% 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 September 30, 2005).

(3) Income from Entergy's investments in Exempt Projects has contributed positively to its overall earning during the period since the Commission issued the June 2000 Order through September 30, 2005.

(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 September 30, 2005, Entergy's consolidated capitalization ratio was approximately 52% debt and approximately 48% equity, consisting of approximately 2.0% preferred stock and approximately 46.0% common stock. These ratios are within industry ranges set by the independent debt rating agencies for BBB-rated electric utility companies.

(5) Except as referred to in, and as of the date of the amended 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 public utility subsidiary in the Entergy system 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 New Orleans approved by the Commission in the Original Order and proposed in the Application, and the increased common equity investment in Entergy Gulf States, Inc. ("EGSI") to maintain its common equity at an acceptable level of total capitalization, Entergy's public-utility subsidiaries expect to fund their operations

primarily from internal sources of cash and from sales of securities to third parties over the period December 1, 2005 through the end of January, 2006. After the debt and equity infusions in New Orleans and EGSI, Entergy will have significant financing capacity available under the Commission authorization in Holding Company Act Release No. 27864 (June 30, 2004) for additional investments in its public-utility subsidiaries.

Applicants state that 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 subsidiaries' 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. 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.

Except to the extent otherwise authorized in the June 2000 Order or any subsequent order issued by the Commission, Entergy will maintain compliance with all of the conditions of rule 53.

#### **IV. Miscellaneous**

Applicants state that the fees, commissions and expenses incurred or to be incurred by the Applicants in connection with filing the Application are estimated not to exceed \$20,000, including \$15,000 estimated for legal fees and \$5,000 estimated for the fees of Entergy Services, Inc.

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 has obtained an order of the Bankruptcy Court authorizing it to borrowing up to \$200 million under the Credit Facility.

Due notice of the filing of the Application has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested of, or ordered by, the Commission. On the basis of the facts in the record, it is found that the applicable standards of the Act and rules under the Act are satisfied, and that no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and rules under the Act, that the Application of Entergy Corporation, et al. (70-10335) 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

Action as set forth herein APPROVED  
pursuant to authority delegated by the  
Commission under Public Law 87-592.  
For the Division of Investment  
Management

By: \_\_\_\_\_  
Branch Chief  
December 7, 2005