UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Louisiana Public Service Commission	)	
	)	
v.	)	**Docket No. EL18-152-001**
	)	
System Energy Resources, Inc., and Entergy Services, Inc.	)	

Louisiana Public Service Commission	)	
	)	
v.	)	**Docket No. EL18-1182-001**
	)	**EL23-11-00**
System Energy Resources, Inc.	)	
	)	

EMERGENCY MOTION ON BEHALF OF THE RETAIL REGULATORS TO LODGE ENTERGY CORP. PRESS RELEASE AND FOR THE ISSUANCE OF CLARIFYING STATEMENT OR PRESS RELEASE CONFIRMING REQUIREMENT THAT SYSTEM ENERGY RESOURCES, INC. IS REQUIRED TO REFUND AMOUNTS DUE SINCE 2004 FOR FAILURE TO INCLUDE DECOMMISSIONING LIABILITY ADIT IN RATE BASE

The Louisiana Public Service Commission, Arkansas Public Service Commission, and Council of the City of New Orleans (together, the "Retail Regulators"), hereby move to lodge the attached press release issued by Entergy Corp. ("Entergy"), which asserts that System Energy Resources, Inc. ("SERI") owes "$0" to consumers in refunds for SERI's failure to include decommissioning liability Accumulated Deferred Income Tax ("ADIT") balances in rate base during the period 2004 to the present. SERI's press release is blatantly incorrect, could cause substantial injury to the investing public, and may mislead consumers and Entergy investors. The Retail Regulators request that the Commission immediately issue a press release or explanatory statement confirming that SERI owes additional refunds for its violation of Commission tax normalization requirements. The following grounds support this motion.

1. On December 23, 2002, the Commission issued *Opinion No. 581* in *Louisiana Public Service Comm'n v. System Energy Resources, Inc.*, 181 F.E.R.C. ¶ 61,243 (2002). That Order and a companion ruling in the *Order on Initial Decision and Establishing a Show Cause Proceeding*, 181 F.E.R.C. ¶ 61,244 (2002) establish that SERI must make refunds for violating the Commission's tax normalization requirements by excluding decommissioning ADIT from rate base from 2004 to the present. The Commission said: "We will require a refund amount that appropriately captures the revenue requirement impact resulting from the exclusion of *all* ADIT amounts resulting from SERI's decommissioning uncertain tax positions during the entire 2004 to present period of noncompliance." 181 F.E.R.C. ¶ 61,243, ¶ 323.

2. On December 26, 2002, Entergy issued a press release on its "Entergy Newsroom" website contending that the Commission ordered a remedy only for the amount of ADIT *allowed by* the Internal Revenue Service related to SERI's 2015 decommissioning tax deduction and that those refunds had already been provided. Entergy said: "We therefore calculate the remaining refunds for the uncertain tax positions to be $0." [Attach. ¶ 4]. Entergy confirmed earnings estimates for 2023. The release states in part:

4143114v.1

> Regarding the uncertain tax position issue, FERC's orders address a series of decommissioning uncertain tax positions that SERI took in order to benefit customers. SERI assumed the risk of Internal Revenue Service penalties and interest that could have resulted from unsuccessful portions of these positions. The IRS ultimately allowed over $100 million of an uncertain tax position SERI took in 2015. The remedy in FERC's order directed SERI to compute a refund based on the accumulated deferred income tax, or ADIT, amounts resulting from the IRS's partial allowance of SERI's 2015 decommissioning uncertain tax positions. Consistent with FERC's order, upon resolution with the IRS of the 2015 uncertain tax position, SERI began to provide an ongoing rate base credit for the ADIT associated with the successful portion of the uncertain tax position, which is estimated to result in a benefit of $69 million to customers over the remaining expected life of Grand Gulf. Additionally, in 2021, SERI provided a one-time credit of $25 million inclusive of interest for the ADIT created by the 2015 decommissioning uncertain tax position, which is consistent with the directives of FERC's order. Therefore, SERI's position is that it has already satisfied the remedy required in FERC's order.
>
> FERC's order also specified that the remedy must not 'reestablish' ADIT balances for tax positions that were denied by the IRS, as SERI received no tax benefits from tax positions that were not successful. Beyond the partial acceptance of the 2015 tax position, the IRS did not allow any portion of SERI's other decommissioning uncertain tax positions. Under the remedy specified by FERC, for uncertain tax positions that the IRS fully disallowed, and for which SERI received no tax benefits, no refunds are due. We therefore calculate the remaining refund for the uncertain tax positions issue to be $0. SERI intends to file a compliance refund report reflecting that calculation as required by the order, which FERC will review and address in a future order.

[Attach. ¶¶ 3-4].

3. The position Entergy asserts in its press release is a blatant and perhaps intentional misrepresentation of the Commission's Orders. Unless corrected, it may cause

substantial damage to Entergy investors and at the least will mislead those investors and the consuming public. A clarifying statement from the Commission can diminish these consequences.

4. Because the Orders were not issued at a regular Commission meeting, there was no summary or Commission release describing the effect of the Orders. Through the issuance of a summary press release or clarifying statement, the Commission can correct Entergy's incorrect issuance on the website.

5. Entergy's press release shows that it does not intend to calculate the refunds owed for its tax normalization violation, despite the requirements of the Orders. Effectively, Entergy intends to re-litigate the issues resolved in the Orders. A press release or explanatory statement regarding the refund requirement will avoid unnecessary and burdensome litigation in the compliance phase of the proceedings.

Respectfully submitted,

Kathryn Bowman
Executive Counsel
Louisiana Public Service Commission
Galvez Building – 12th Floor
602 N. Fifth Street
Baton Rouge, Louisiana 70802
Telephone: (225) 342-9888
Email: Kathryn.bowman@la.gov

Michael R. Fontham
Dana M. Shelton
Justin A. Swaim
Of
STONE PIGMAN WALTHER WITTMANN L.L.C.
909 Poydras Street, Suite 3150
New Orleans, Louisiana 70112-4042
Telephone: (504) 581-3200
Email: mfontham@stonepigman.com
dshelton@stonepigman.com
jswaim@stonepigman.com

Attorneys for the Louisiana Public Service Commission

Glen Ortman
Denyse Zosa
Stinson LLP
1775 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006
Telephone: (202) 728-3015
Fax: (202) 572-9959
Email: glen.ortman@stinson.com

Justin Craig
Commission Counsel
ARKANSAS PUBLIC SERVICE COMMISSION
1000 Center Street
P.O. Box 400
Little Rock, AR 72203-0400
Telephone: (501) 682-5302
Email: Justin.Craig@arkansas.gov

Attorneys for the Arkansas Public Service Commission

Clinton A. Vince
Presley R. Reed, Jr.
Emma Hand
Jennifer Morrissey
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 408-9174
Email: clinton.vince@dentons.com
presley.reedjr@dentons.com
emma.hand@dentons.com
jennifer.morrissey@dentons.com

Attorneys for the Council of the City of New Orleans

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing "Emergency Motion on Behalf of the Retail Regulators to Lodge Entergy Corp. Press Release and for the Issuance of Clarifying Statement or Press Release Confirming Requirement that System Energy Resources, Inc. is Required to Refund Amounts Due Since 2004 for Failure to Include Decommissioning Liability ADIT in Rate Base" has been served upon all counsel of record by email this 3rd day of January, 2023.

Michael R. Fontham

ATTACHMENT

For Immediate Release

Federal Energy Regulatory Commission issues key orders regarding System Energy Resources, Inc.

12/26/2022

CONTACT

Bill Abler (Investors) | 281-297-5436 | wabler@entergy.com (mailto:wabler@entergy.com)

Neal Kirby (Media) | 504-576-4238 | nkirby@entergy.com (mailto:nkirby@entergy.com)

Entergy affirms adjusted EPS guidance and outlooks; commits to continue to work with regulators on behalf of customers

NEW ORLEANS – On Dec. 23, 2022, the Federal Energy Regulatory Commission issued two orders in ongoing proceedings involving the customer rate impacts of the Grand Gulf Nuclear Station. SERI operates Grand Gulf and owns or leases 90% of the station.

"We believe Friday's FERC orders are a positive step toward resolving a number of long-standing issues raised by our retail regulators. While we disagree with some elements of FERC's findings, in particular its ruling on the sale leaseback claim, we are pleased that FERC's remedy results in no additional refunds due to customers beyond those already provided in 2021 on the uncertain tax positions taken by SERI," said Drew Marsh, Entergy's chief executive officer. "SERI has consistently maintained that its tax strategy was in the best interest of customers and ultimately provided them with millions of dollars in savings. We are committed to working with our regulators to resolve outstanding FERC issues for the benefit of our customers."

Regarding the uncertain tax position issue, FERC's orders address a series of decommissioning uncertain tax positions that SERI took in order to benefit customers. SERI assumed the risk of Internal Revenue Service penalties and interest that could have resulted from unsuccessful portions of these positions. The IRS ultimately allowed over $100 million of an uncertain tax position SERI took in 2015. The remedy in FERC's order directed SERI to compute a refund based on the accumulated deferred income tax, or ADIT, amounts resulting from the IRS's partial allowance of SERI's 2015 decommissioning uncertain tax position. Consistent with FERC's order, upon resolution with the IRS of the 2015 uncertain tax position, SERI began to provide an ongoing rate base credit for the ADIT associated with the successful portion of the uncertain tax position, which is estimated to result in a benefit of $69 million to customers over the remaining expected life of Grand Gulf. Additionally, in 2021, SERI provided a one-time credit of $25 million inclusive of interest for the ADIT created by the 2015 decommissioning uncertain tax position, which is consistent with the directives of FERC's order. Therefore, SERI's position is that it has already satisfied the remedy required in FERC's order.

FERC's order also specified that the remedy must not "reestablish" ADIT balances for tax positions that were denied by the IRS, as SERI received no tax benefits from tax positions that were not successful. Beyond the partial acceptance of the 2015 tax position, the IRS did not allow any portion of SERI's other decommissioning uncertain tax positions. Under the remedy specified by FERC, for uncertain tax positions that the IRS fully disallowed, and for which SERI received no tax benefits, no refunds are due. We therefore calculate the remaining refund for the uncertain tax positions issue to be $0. SERI intends to file a compliance refund report reflecting that calculation as required by the order, which FERC will review and address in a future order.

On the sale leaseback case, the order calls for SERI to refund approximately $149 million, including interest, resulting from the disallowance of $17 million in annual lease payments from 2015 through 2022. Taking into account SERI's previous settlement with the Mississippi Public Service Commission, the total sale leaseback refund amount is $89 million. The order also states that SERI can no longer collect $17 million in annual lease payments on a prospective basis. Net of the Entergy Mississippi settlement, the prospective exclusion would be approximately $10 million annually (pre-tax). SERI disagrees with this ruling and will seek rehearing. This sale leaseback renewal was entered into to lower costs to customers, which is a benefit that FERC previously recognized. Customers also continue to receive the power produced by the leased portion of the plant.

Regarding the financial impacts of these FERC orders, assuming there are no changes to either order upon rehearing, Entergy affirms its adjusted EPS guidance for 2022 and adjusted EPS outlooks for 2023-2025.

Grand Gulf is the principal asset owned by SERI, and it is the largest single-unit nuclear reactor in the United States, employing 675 site workers and providing power to Entergy operating company customers in Arkansas, Louisiana and Mississippi.

"The dedicated men and women who work at Grand Gulf have not been distracted by these ongoing proceedings. Their primary focus has been, and continues to be, the safe and reliable operations of the facility. Grand Gulf is a critical component of Entergy's overall generation fleet and provides clean, affordable, carbon-free energy for our customers," said Marsh. "I appreciate the team's continued focus on ensuring that Grand Gulf continues to deliver clean, affordable, and reliable power to our customers."

About Entergy

Entergy (NYSE: ETR), a Fortune 500 company headquartered in New Orleans, powers life for 3 million customers through its operating companies across Arkansas, Louisiana, Mississippi and Texas. Entergy is creating a cleaner, more resilient energy future for everyone with our diverse power generation portfolio, including increasingly carbon-free energy sources. With roots in the Gulf South region for more than a century, Entergy is a recognized leader in corporate citizenship, delivering more than $100 million in economic benefits to local communities through philanthropy and advocacy efforts annually over the last several years. Our approximately 12,500 employees are dedicated to powering life today and for future generations. Learn more at entergy.com (https://www.entergy.com/) and follow @Entergy (https://www.entergynewsroom.com/social/) on social media. #WePowerLife

Cautionary note regarding forward-looking statements

In this news release, and from time to time, Entergy Corporation makes certain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements include, among other things, statements regarding Entergy's 2022 earnings guidance; current financial outlooks; and other statements of Entergy's plans, beliefs, or expectations included in this news release. Readers are cautioned not to place undue reliance on these forward-looking statements, which apply only as of the date of this news release. Except to the extent required by the federal securities laws, Entergy undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

Forward-looking statements are subject to a number of risks, uncertainties, and other factors that could cause actual results to differ materially from those expressed or implied in such forward-looking statements, including (a) those factors discussed elsewhere in this news release and in Entergy's most recent Annual Report on Form 10-K, any subsequent Quarterly Reports on Form 10-Q, and Entergy's other reports and filings made under the Securities Exchange Act of 1934; (b) uncertainties associated with (1) rate proceedings, formula rate plans, and other cost recovery mechanisms, including the risk that costs may not be recoverable to the extent or on the timeline anticipated by the utilities and (2) implementation of the ratemaking effects of changes in law; (c) uncertainties associated with (1) realizing the benefits of its resilience plan, including impacts of the frequency and intensity of future storms and storm paths, as well as the pace of project completion and (2) efforts to remediate the effects of major storms and recover related restoration costs; (d) risks associated with operating nuclear facilities, including plant relicensing, operating, and regulatory costs and risks; (e) changes in decommissioning trust fund values or earnings or in the timing or cost of decommissioning Entergy's nuclear plant sites; (f) legislative and regulatory actions and risks and uncertainties associated with claims or litigation by or against Entergy and its subsidiaries, including without limitation the litigation that is the subject of this news release; (g) risks and uncertainties associated with executing on business strategies, including strategic transactions that Entergy or its subsidiaries may undertake and the risk that any such transaction may not be completed as and when expected and the risk that the anticipated benefits of the transaction may not be realized; (h) impacts from terrorist attacks, geopolitical conflicts, cybersecurity threats, data security breaches, or other attempts to disrupt Entergy's business or operations, and/or other catastrophic events; (i) the direct and indirect impacts of the COVID-19 pandemic on Entergy and its customers; and (j) effects on Entergy or its customers of (1) changes in federal, state, or local laws and regulations and other governmental actions or policies, including changes in monetary, fiscal, tax, environmental, or energy policies; (2) the effects of changes in commodity markets, capital markets, or economic conditions; and (3) the effects of technological change, including the costs, pace of development, and commercialization of new and emerging technologies.

TAGS

CORPORATE (/NEWS/TAG/CORPORATE/) NUCLEAR (/NEWS/TAG/NUCLEAR/) GRAND GULF (/NEWS/TAG/GRAND GULF/)

INVESTOR RELATIONS (/NEWS/TAG/INVESTOR RELATIONS/)

Related Articles

Statement on the Federal Energy Regulatory Commission orders on System Energy Resources, Inc.

(/news/statement-on-federal-energy-regulatory-commission-orders-on-system-energy-resources-inc/)

Entergy Nuclear volunteers ensure no child goes hungry at the holidays

(/news/entergy-nuclear-volunteers-ensure-no-child-goes-hungry-at-holidays/)

Entergy Texas declares quarterly dividend on preferred stock

(/news/entergy-texas-declares-quarterly-dividend-on-preferred-stock-205953673/)

We power life.

Document Content(s)