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MEDIA RELEASE

December 28, 2022

For Immediate Release

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LPSC Wins Rulings at FERC, Customer Refunds Expected

The Louisiana Public Service Commission ("LPSC") was pleased with two recent decisions of the Federal Energy Regulatory Commission ("FERC") that found System Energy Resources, Inc. ("SERI"), an Entergy subsidiary, overcharged consumers for over two decades and ordered refunds of hundreds of millions of dollars for the Company's tariff violations.

FERC affirmed the initial decision in EL 18-152 and determined that SERI failed to reduce its rate base for taxes it collected from consumers but did not pay to the government because of an "uncertain" tax deduction. This deduction was for the future cost of decommissioning the Grand Gulf nuclear power plant located in Port Gibson, Mississippi. As a result of FERC's decision, SERI overbilled customers served by Entergy Louisiana, LLC, Entergy New Orleans, LLC, and Entergy Arkansas, LLC.[1]

The initial decision was by a FERC administrative law judge and occurred in 2020. The initial decision ordered SERI to pay $334 million in refunds plus interest, on the uncertain tax deduction. FERC affirmed that decision on Friday, December 23, 2022, but altered the order to include additional refunds for items omitted from the initial decision's refund calculation.

In a regulatory filing for third quarter 2022, Entergy estimated that the total refunds pursuant to the initial decision would be $556 million on the tax deduction issue. However, in a surprising

[1] The Mississippi Public Service Commission was also a party to this complaint, which would have resulted in a FERC decision that customers of Entergy Mississippi, LLC were also overcharged; however, the Mississippi Public Service Commission settled its claim earlier this year.

and inaccurate announcement on its website Saturday and Monday, Entergy stated that the FERC decision requires $0 in additional refunds on the tax collection issue.

The LPSC, New Orleans Council, and Arkansas Public Service Commission ("APSC") estimated the damages for the failure to reduce SERI's rate base for tax collections to be more than $850 million. Based on the FERC decision, the amount distributed to customers of Entergy Louisiana, Entergy New Orleans, and Entergy Arkansas would be approximately $510 million.

FERC's decision in EL 18-152 also determined that SERI did not properly account for a sale/leaseback arrangement in its tariff, which now requires SERI to refund an additional approximate $150 million as the result of overcharging customers for these accounting errors.

FERC also issued a decision in ER 18-1182, where it ordered Entergy to return excess deferred taxes it had collected associated with the Tax Cut and Jobs Act that were attributable to its uncertain tax positions. Entergy has already refunded a portion of these deferred taxes and a compliance filing will determine if any additional costs associated with their improper retention of those taxes is owed to customers.

The LPSC, Council, and APSC are surprised by Entergy's announcements over the last week that no more refunds are due on the uncertain tax positions and consider it blatantly inaccurate. No fair reading of either decision could support Entergy's interpretation. "For reasons unknown, Entergy is attempting to mislead its consumers, investors and the public regarding the consequences of FERC's findings of unjust and unreasonable conduct by SERI," said LPSC Chairman Lambert Boissiere.

FERC said in paragraph 304 of its decision in EL 18-152, "We affirm the determination of the Initial Decision that SERI must refund <u>amounts as a result of improperly excluding ADIT</u> from the UPSA rate base, but modify the Initial Decision to require a refund amount that reflects the correct period of noncompliance . . . ." (emphasis in original)

In an extensive discussion, FERC rejected each of SERI's arguments seeking to justify its failure to reduce rate base for the taxes collected from consumers. The taxes are referred to as "ADIT," or accumulated deferred income taxes, in the decision. FERC repeatedly stated that it "disagree[d]" with Entergy's arguments. In paragraph 323, FERC stated:

> "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. This refund amount is intended to compensate customers for the excessive revenue requirement incurred as a result of SERI's noncompliance."

In Paragraph 325, FERC directed Entergy to "include all ADIT amounts resulting from SERI's decommissioning uncertain tax positions taken during 2004 to present periods."

Based on the regulators' preliminary calculations resulting from these FERC decisions, total refunds owed to customers on all of the issues discussed above, excluding Mississippi customers, will amount to around $600 million. About $160 million would be due to Entergy Louisiana customers, $190 million to customers served by Entergy New Orleans and $241 million to Entergy Arkansas customers.

The Louisiana Public Service Commission is a constitutionally created independent regulatory agency dedicated to serving the public interest by assuring safe, reliable, and reasonably priced services from public utilities and motor carriers. The LPSC, reaffirmed in Article IV, Section 21 of the 1974 Constitution of the State of Louisiana, consists of five elected Commissioners who serve overlapping terms of six years. The Commission has jurisdiction over certain publicly-owned utilities providing electric, water, wastewater, natural gas, and telecommunication services, as well as all the electric cooperatives in Louisiana. It does not regulate Entergy New Orleans, which is regulated by the New Orleans City Council under its Home Rule Charter.

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