
Response to Apparent Violations River Bend Station Decommissioning Funding

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Entergy Attendees

- John McCann VP. Nuclear Safety EP & Licensing
- Wanda Curry VP & CFO, Nuclear Operations
- Mike Perito Site Vice President, RBS
- Jerry Roberts Nuclear Safety Assurance Director, RBS
- Joe Aluise Assistant General Counsel
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- Bryan Ford Senior Manager, Nuclear Safety & Licensing
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Agenda

- Introductions Mike Perito
- Opening Remarks John McCann
- Background Joe Aluise
- Apparent Violations Joe Aluise
- Regulatory Analysis Bryan Ford
- Concluding Remarks John McCann

Overview

- Rate Recovery
- March 30, 2009 Letter
- Requirement for Decommissioning Shortfall Recovery
- Contractual Requirements

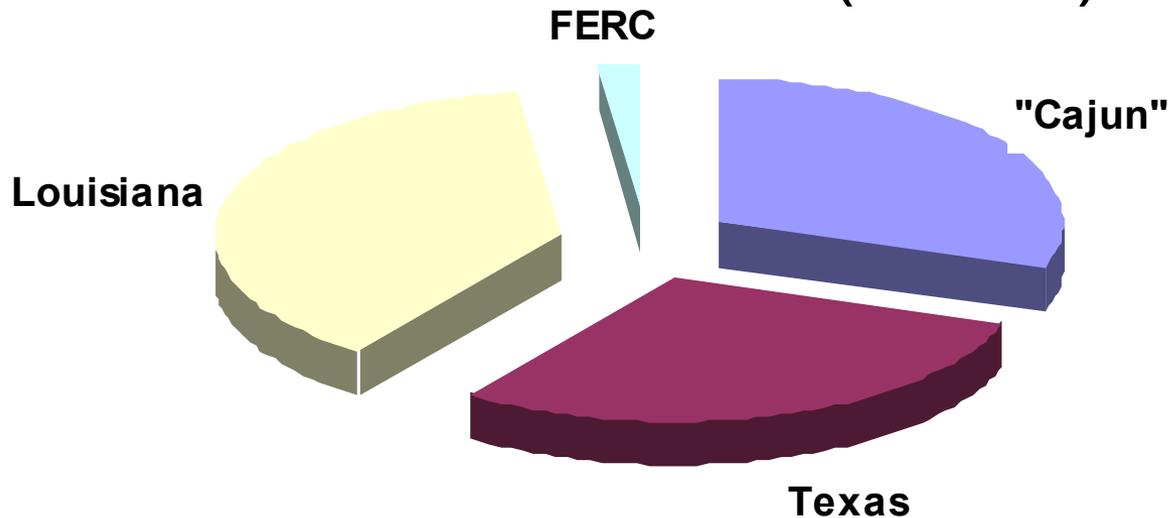
Three Apparent Violations

1. River Bend decommissioning funding inadequate as of December 31, 2008.
2. River Bend March 30, 2009 10 CFR 50.75(f) filing incomplete.
3. EGSL-ETI Power Purchase Agreement not compliant with 10 CFR 50.75(e)(1)(v).

Background and Timeline
Relating to March 30, 2009
Decommissioning Filing

River Bend Decommissioning Funding Structure

- 30% “Cajun” share (prepaid)
- 42.5% of 70% to Texas – (PUCT)
- ~55.4% of 70% to Louisiana – (LPSC)
- ~2.1% of 70% to Louisiana (FERC)



2007 – Indirect Transfer Creating ETI and EGSL

- EGSI made 2007 filing with NRC for indirect license transfer per 10 CFR 50.80.
- Two new companies formed – EGSL and ETI, both rate regulated.
- EGSL retained River Bend legal ownership, but ETI got life-of-plant right to former allocation of River Bend power.
- Texas and Louisiana rate regulators maintained jurisdiction over decommissioning funding liabilities.

River Bend Power to ETI Through FERC Tariff and Power Purchase Agreement

- Power Purchase Agreement invokes Federal Energy Regulatory Commission Tariff MSS-4.
- MSS-4 regulated by FERC.
- However, Public Utility Commission of Texas retains regulatory authority over decommissioning collections from Texas ratepayers under MSS-4.
- MSS-4 is a cost of service tariff; not market based rates.

FERC Tariff Provides for Retail Regulator to Set Decommissioning Rates

- FERC tariff MSS-4 Sec. 40.05 calculates “Operating Expense” by starting with O&M FERC accounts,
“Plus any Depreciation Expense associated with plant investment in Designated Generating Unit . . . and Decommissioning Expense, **as approved by Retail Regulators. . . .**” Sec. 40.05(c)

River Bend Decommissioning is Subject to Retail Rate Regulation

- PPA is a FERC and PUCT regulated tariff.
- ETI's share of River Bend decommissioning is fully rate regulated as the Texas ratepayers' share has always been.

Decommissioning Funding Regulators

<u>Jurisdiction</u>	<u>Pre-Division</u>	<u>Post-Division</u>
Texas	PUCT	PUCT
Louisiana	LPSC	LPSC
FERC/Cajun	FERC	FERC

The PPA is a “Government-Mandated Revenue Stream”

- NRC has stated power contracts are “not equivalent to a Government-mandated revenue stream that would fully fund decommissioning costs.” Final Rule, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, 63 F.R. 50465, 50471 (Sept. 22, 1998).
- The River Bend PPA is a “Government-mandated revenue stream” meeting the requirements for external sinking fund decommissioning treatment because its decommissioning charges are regulated by the FERC/PUCT.

NRC was Provided the PPA as part of Application to NRC

- May 29, 2007 License Transfer Application included PPA. (ML071560529)
- MSS-4 was provided to NRC in August 30, 2007 RAI response. (ML072470715)

NRC Staff Reviewed the Decommissioning Collection Methodology

- NRC Staff's SER concluded:

“The application states that the existing mechanisms that provide financial assurance for decommissioning RBS will not change as a result of the proposed restructuring. EGS-LA will provide decommissioning funding assurance through an external sinking fund as EGS is doing now. Funds for decommissioning will continue to be collected through rates established by the LPSC and payments to EGS-LA from ETI under the MSS-4 PPA, and they will be held in an external trust established for the purpose of decommissioning the plant.” SER dated October 26, 2007 (ML072710588)

NRC Approved the License Transfer Application, Including the PPA

- October 27, 2007 NRC Order:

“The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations set forth in 10 CFR Chapter I” (ML072420498)

The Merger by Division Implemented, and PPA Executed as Approved by NRC

- EGSI split into ETI and EGSL effective January 1, 2008.
- EGSL retains ownership of River Bend.
- ETI and EGSL get their prior share of River Bend output.
- PPA Executed on January 1, 2008.
- Public Utility Commission of Texas (PUCT) and the Louisiana Public Service Commission continue to regulate River Bend decommissioning funding.

March 16, 2009: PUCT orders cessation of River Bend Decommissioning Funding

- Two weeks before the March 30, 2009 River Bend decommissioning report, in PUCT Docket No. 34800, the PUCT issued an order that resulted in the suspension of further decommissioning payments through MSS-4, effective January 1, 2009, for the Texas-jurisdictional share of River Bend.

March 30, 2009: River Bend 10 CFR §50.75(f)(1) Report Filed

- The report stated on its face that PUCT funding had been suspended:
“Funding for the Texas jurisdictional share was suspended in March 2009 pursuant to Order of the Public Utility Commission of Texas.”
(ML090920218)
- As a result, the calculation of available funds did not include future payments through the PPA.
- The report stated: “Contracts upon which licensee is relying for Decommissioning Funding: None.”

NRC Identifies River Bend Decommissioning Shortfall

- June 18, 2009 NRC letter to EGSL identifies potential shortfall. (ML091540293)
- June 18 letter requested response plan:
“If Entergy Gulf States Louisiana is determined to have a projected shortfall, **it will need to submit a plan by a date to be established**”
- August 13, 2009, pursuant to the NRC’s requirement in the June 18, 2009 letter, Entergy submitted plans to the NRC to address identified shortfalls in the decommissioning funding for River Bend. (ML092260590)
- Plans propose to seek relief from rate regulators by December 31, 2009.

NRC Issues 2 RAIs on River Bend Plan

- October 14, 2009: the NRC sends EGSL RAIs on the proposed River Bend decommissioning funding assurance plan. (ML092680611)
- November 12, 2009: EGSL timely provided responses to those RAIs. (ML093200212)
- March 11, 2010: NRC sends EGSL second RAIs on the proposed River Bend decommissioning funding assurance plan. (ML100700360)
- May 10, 2010: EGSL timely provided responses to those RAIs. (ML101520363)

Meanwhile, EGSL Proceeds to Implement the Proposed Funding Plan

- EGSL and ETI made appropriate filings with the Louisiana Public Service Commission and the Public Utility Commission of Texas by December 31, 2009 seeking additional decommissioning funding in accordance with those plans.
- On July 28, 2010, the LPSC ordered additional River Bend decommissioning funding.
- On August 6, 2010, ETI filed a settlement agreement with the PUCT resolving its request for additional decommissioning funding for River Bend.

Discussion of and Response to *Apparent Violations*

Response to Apparent Inadequate Decommissioning Funding

- River Bend decommissioning funding is rate regulated, and Licensee continues to use the “external sinking fund” method allowed by the regulations to provide for decommissioning funding.
- Applicable NRC guidance allows time for rate regulated licensees to address projected decommissioning shortfalls.

Response to Apparent Inadequate Decommissioning Funding

- Consistent with Licensee's interpretation of the regulations and with applicable regulatory guidance, once the NRC confirmed in early 2009 that a projected shortfall existed, it asked for a plan.

NRC Requested a Plan

- June 18, 2009 NRC letter identifies potential shortfall and requests response plan.
“If Entergy Gulf States Louisiana is determined to have a projected shortfall, **it will need to submit a plan by a date to be established**”
(ML091540293)
- Licensee submitted a plan.
- If this were a violation, it should have been cited on June 18, 2009.
- Other licensees with projected shortfalls apparently were not cited with a violation.

Applicable NRC Guidance Allows Time

- Regulatory Guide 1.159, Rev. 1, Assuring the Availability of Funds for Decommissioning Nuclear Reactors, at 2.1.5, 2.2.8.
 - **“A reasonable time may be used to make up any deficit, consistent with good-faith efforts to obtain appropriate rate relief.”**
 - **“In every case, needed adjustments to the amount of funds set aside should be made at least once every two years, in conjunction with the biennial report, for licensees who are no longer rate-regulated or do not have access to a non-bypassable charge, and at least once every 6 years for licensees who are rate-regulated (see Regulatory Position 1.4).”**
- NUREG-1577, Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, Rev. 1, at section III.2.a.(1).(b).
 - **“Power reactor licensees are required to change their collection amounts periodically. For licensees that remain under rate regulation, this period may coincide with licensees' usual rate cycles.”**

Apparent Violation of 10 CFR §50.9

- River Bend's March 30, 2009 10 CFR 50.75(f) filing was not incomplete or inaccurate.
- PUCT Ordered cessation of funding.
- Licensee was not relying on PPA on March 30, 2009.

Applicable Regulation

- September 23, 2010 NRC letter says EGSL's March 30, 2009 report was not complete and accurate because it "failed to report a contract (i.e., a power purchase agreement) with Entergy Texas, Inc., which Entergy **has relied upon during the reporting period** for financial assurance. . . ."
- 10 CFR §50.75(f)(1) requires a report on "any contracts upon which the licensee **is relying** under paragraph (e)(1)(v) of this section."
- The regulation uses a different verb tense (present tense) than the Staff's apparent violation, and the regulation does not refer to a reporting requirement covering the "reporting period," an undefined term.

The March 30, 2009 Report Clearly Stated PUCT Had Suspended Decommissioning Funding

- “Funding for the Texas jurisdictional share was suspended in March 2009 pursuant to Order of the Public Utility Commission of Texas.”
(ML090920218)
 - As a result, the projections of collections in the March 30, 2009 report did not show any future entries for PUCT-regulated amounts.
 - Therefore, EGSL **could not have been relying** on collections through the PPA at the time of the report.
 - Because of the above, had EGSL indicated it was relying on the PPA, the response would arguably have been inaccurate.
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Licensee Did Not Have to Rely on the PPA

- 10 CFR 50.75(e)(1) provides many alternatives to establish financial assurance:
- Licensee could have proposed any of the several allowable methods.
- In fact, the Licensee chose to seek reinstatement of the payments through MSS-4, continuing to use the external sinking fund method, but that decision had not been made when the report was filed.

Apparent Violation of PPA Compliance with 10 CFR §50.75(e)(1)(v)

- EGSL-ETI Power Purchase Agreement was compliant with 10 CFR 50.75(e)(1)(v).
- The “operational status” and “force majeure” provisions Staff asserts are not in the PPA are in fact addressed by the PPA.
- The regulations do not require the contract to contain a term mandating deposit of proceeds to the external sinking fund.

The PPA Provides for Payment Notwithstanding Operational Status

- As described in the May 10, 2010 RAI response, the MSS-4 tariff requires payment notwithstanding the operational status of the plant.
- Decommissioning costs are included in a capacity charge that is unrelated to any energy from the plant, and that does not depend on plant operation.
- Even today, capacity payments are made during outage periods.

The PPA Expressly Provides for Payment Even After Plant Shutdown

- The PPA includes the following clause:
“5. Term. The term of this Agreement shall be the operating life of the Designated Units, **plus any time required to decommission the Designated Units.**”

The PPA Requires Payment Notwithstanding Events of Force Majeure

- There is no clause in the power purchase contract, or in the implementing tariff, MSS-4, that excuses a party's obligations based on an event of force majeure.
- Both Texas and Louisiana law provide that unless a contract clause excuses performance for events of force majeure, force majeure events do not excuse performance.

Regulations Do Not Require the Contract to Include a Deposit Provision

- 10 CFR 50.75(e)(1)(v): “To be acceptable to the NRC as a method of decommissioning funding assurance, **the terms of the contract(s) shall include** provisions that the electricity buyer(s) will pay for the decommissioning obligations specified in the contract(s), notwithstanding the operational status either of the licensed power reactor to which the contract(s) pertains or force majeure provisions. **All proceeds from the contract(s) for decommissioning funding will be deposited to the external sinking fund.**”
- The red language above creates an affirmative obligation to deposit the funds, not a requirement for a contractual provision.

Regulatory Summary

Actions Taken

- All Entergy Nuclear personnel received training on the completeness and accuracy of information requirements of 10 CFR 50.9 since the March 31, 2009 submittal.
- Plan to correct shortfall drafted and timely submitted.
- Regulatory filings for increased decommissioning collections instituted per plan.
- LPSC order for renewed collections secured, and collections begun.
- Settlement secured and filed with PUCT for Texas collections.
- PPA/MSS-4 Amendment Drafted on August 2, 2010, has been executed, and FERC filing is in process adding express terms called for by 10 CFR 50.75(e)(1)(v).
- Credit for Corrective Actions should be considered.

Significance

- Collections were always controlled by state rate regulators.
- NRC had been provided the PPA and MSS-4 in the license transfer application, and declared that the application complied with NRC's regulations. RAIs concerning MSS-4 should not have been required by the NRC.
- Even if a violation is issued, the severity level should not rise above Severity Level IV.

Conclusion

- The three apparent violations identified by the Staff should not be issued.
- Entergy has worked to address the issues
 - Entergy Nuclear personnel have received training on the completeness and accuracy of information requirements of 10 CFR 50.9
 - Rate Relief
 - Contract Changes