



# Special Public Notice

**U.S. Army Corps  
Of Engineers  
Vicksburg District**

Entergy, Incorporated  
(Entergy) - WRDA 2000  
Date Issued: September 13, 2019  
Comments Due: October 13, 2019

**PROPOSED FUNDING AGREEMENT  
BETWEEN  
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT  
AND ENTERGY, INCORPERATED  
PURSUANT TO  
SECTION 214 WATER RESOURCE DEVELOPMENT ACT 2000,  
AS AMENDED**

**PURPOSE OF PUBLIC NOTICE:** To inform you of a proposed agreement between the U.S. Army Corps of Engineers, Vicksburg District, and Entergy, Incorporated (Entergy) to transfer funds pursuant to Section 214 of the *Water Resources Development Act of 2000*, as amended to expedite the evaluation of permits under jurisdiction of the Department of the Army (DA).

**AUTHORITY:** Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541), as amended, provides:

- (a) The Secretary of the Army, after public notice, may accept and expend funds contributed by a public utility company to expedite the evaluation of permits of that company related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.
- (b) In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to permits, either substantively or procedurally.

The Secretary of the Army has delegated this responsibility to the Assistant Secretary of the Army for Civil Works, who has re-delegated the authority to the Chief of Engineers and his authorized representatives, including the Commander of the Vicksburg District, U.S. Army Corps of Engineers.

This Public Notice announces the preliminary intent of the Vicksburg District to accept and expend funds contributed by Entergy to expedite processing of their DA permit applications related to a project or activity for a public purpose, subject to a series of limitations. This Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by a public utility company to expedite the evaluation of DA permit applications.

**Qualification as a Public Utility Company:** Entergy qualifies as a public utility company under Section 1262 of the Public Utility Holding Company Act of 2005. Activities proposed by Entergy for evaluation using Section 214 funds include construction of utility substations, utility transmission lines, utility distribution lines, generation facilities, pipelines, mitigation banks, and permittee responsible mitigation sites.

**How the Vicksburg District would expend the funds:** The Corps of Engineers' Regulatory Program is funded as a Congressionally-appropriated line item in the annual Federal budget. Additional funds received from a public utility company would be used to augment the Vicksburg District Regulatory budget in accordance with the provisions of Section 214 WRDA 2000, as amended. The Vicksburg District would establish a separate account to track receipt and expenditure of the funds from Entergy. Vicksburg District Regulatory employees would charge their time against the respective account of the public utility company, when they did work to expedite resolution of one of Entergy's permit requests. With an increased Regulatory budget, the Vicksburg District may hire additional employees, paying salaries in part from the public utility company, funding to the degree the employees work on expediting the company's permit applications.

**The kind of activities for which funds would be expended:** Funds would mainly be expended on the salaries and overhead of Regulatory Project Managers performing expedited processing activities for Entergy. Such activities would include, but not be limited to, the following: application intake review, drawings correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conducting the public interest review, preparation of draft permit decision documents, and meetings with the applicant. Funds would not be expended for review of project managers' work by supervisors, other elements of the Vicksburg District, or other persons in the decision making chain of command. No enforcement or compliance activities for Entergy projects would be paid from the augmenting funds, nor would the funds be used for paying the costs of public hearings and distribution of public notices.

If a participating entity's funds are expended and are not renewed, their remaining permit applications would be handled like those of any other non-participant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

**Procedures Vicksburg District will use to ensure that the funds will not impact impartial decision making:** To ensure that the funds will not impact impartial decision making, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using additional funds provided by Entergy:

- a. All final permit decisions for Entergy permit applications where these funds are used must be reviewed and approved by a responsible official that is at least one level above the decision maker. For example, if the decision maker is the Section Chief, then the reviewer would be the Chief, Regulatory Branch. Additionally, the one level above reviewer would not be funded partially or fully by Entergy.
- b. All final permit decisions for cases where these funds are used will be made available on the Vicksburg District Regulatory web page.
- c. The Vicksburg District will not eliminate any procedure or decisions that would otherwise be required for that type of project and permit application under consideration.
- d. The Vicksburg District must comply with all applicable laws and regulations.
- e. Funds will only be expended to expedite the evaluation of the permit application. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps Regulatory Program employees, before the decision is made.
- f. Instruments for mitigation banks or in-lieu-fee programs developed where these funds are used must be signed by a Regulatory Branch Chief, an equivalent, or a higher level position that is not funded by any funding agreement.
- g. All preliminary jurisdictional determinations (JDs) and approved JDs where these funds are used to complete the JD must have documentation that a non-funded regulator conducted a review of the determination. This review is intended to maintain impartiality in the decision and does not require a one-level-above reviewer. The JD review does not need to be a field review. For those approved JDs that require coordination with EPA, additional internal review is not required.

**Benefits allowable funding entities receive from participation in Section 214:** Section 214 of WRDA 2000 is designed to enable the Vicksburg District Regulatory Program to expedite the processing of projects with a public purpose. Participating entities can expect some of their permit applications to receive expedited handling, and to the degree we consider it appropriate, they can set priorities for the review of their applications. Their augmentation of our Regulatory budget may allow us to hire additional people, increasing the size of the pool from which we would assign people to evaluate applications. The result for participants should be streamlined permit processing, new tools to improve the permit review process, and a more predictable time-line for obtaining DA authorization decisions.

**Impacts we foresee to our Regulatory Program and to DA permit evaluations that are not subsidized by funds contributed by Entergy:** We do not expect this method of expediting the permit review of Entergy projects with a public purpose to negatively impact the Vicksburg District's Regulatory Program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by Entergy under Section 214, since there will be no decrease in staff available to review applications from other applicants. Reference documents and programmatic tools developed under the proposed Section 214 agreement with Entergy would also be available to the general public to the extent practicable.

**Consideration of Comments:** This public notice has a 30-day comment period. Following the review of comments we receive in response to the public notice, the Vicksburg District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000, as amended. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the Act and is not otherwise contrary to the general public interest, the Vicksburg District will proceed to accept and expend such funds from the Entergy. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate justification. A final informational public notice will be issued regarding the District Commander's decision.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before October 13, 2019. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should be submitted to:

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U.S. Army Corps of Engineers  
4155 Clay Street  
Vicksburg, Mississippi 39180  
regulatory@usace.army.mil



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ACTING CHIEF, REGULATORY BRANCH