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FEDERAL ENERGY
REGULATORY
COMMISSION

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Entergy Services, Inc.

)

Docket No. EL99-57-000

**PROTEST, MOTION FOR SUMMARY DISPOSITION
AND ALTERNATIVE MOTIONS TO HOLD PETITION IN ABEYANCE
OR FOR HEARING OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211, and the Commission's April 7, 1999 notice of filing issued in this proceeding, Arkansas Electric Cooperative Corporation ("AECC") hereby submits its protest of the Petition for Declaratory Order Regarding Compliance of Transcon Proposal with Applicable ISO Principles^{1/} filed on April 5, 1999 ("Petition") by Entergy Services, Inc., an affiliate of Entergy Corporation. (Except as otherwise indicated "Entergy" refers to Entergy Corporation and any or all of its subsidiaries.) ^{2/} In support of its Protest, AECC states as follows:

^{1/} *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,730-31,732 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

^{2/} On April 30, 1999, AECC filed a motion to intervene in this proceeding pursuant to Rule 214 of the Commission's Rules, 18 C.F.R. § 385.214 (1998).

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1. AECC'S INTEREST IN REGIONAL TRANSMISSION ACCESS

AECC provides its member distribution cooperatives with the power to supply approximately 350,000 customers located in each of the 75 counties in Arkansas. The loads and resources of AECC and its members are located in the control areas operated by Entergy, Central and South West Corporation's Southwestern Electric Power Company, and the U.S. Department of Energy's Southwestern Power Administration. AECC's peak load is approximately 1,800 MW. More than 70 percent of that load is located on Entergy's transmission system. AECC is the owner, joint owner, or lessee of ten generating units, which have an aggregate of net generating capacity of slightly more than 1,750 MW. The largest of AECC's generation assets are its ownership interests in the White Bluff and Independence steam generation plants operated by Entergy. AECC has always endeavored to plan its system to equilibrate loads and resources among the control areas in which its loads are located as best it could. However, the need to capture scale economies, as well as diversities in load characteristics, ensured that resources could never be precisely matched to load in each of the control areas in which AECC operates. As a result AECC is not only dependent upon each of the entities in whose transmission systems its loads are embedded for intra-system transmission, but is also highly dependent upon inter-system transfers to serve its load efficiently. AECC also employs the regional market to trade in energy when it is opportune to do so. While AECC continues to obtain acceptable transmission service for most of these purposes under grandfathered contracts, it does purchase some tariffed service and must plan for the day when it will have to utilize tariffed services largely or exclusively.

The present regime of pancaked transmission rates and ancillary services and unclear, inconsistent capacity determination bars the way for entities such as AECC to capture the

benefits of competitive generation markets for their customers. The urgency of AECC's concern to eliminate these obstacles to competitive power supply has been increased by the adoption this year of retail deregulation legislation by the Arkansas legislature. The Arkansas consumers who own AECC's member cooperatives and, through them, AECC, will be ill-served by such deregulation in the absence of effective competition. The ability of AECC and others to compete effectively with Entergy-- the behemoth owning virtually all of the integrated transmission in the state and most of the generation, and presently serving nearly 47 percent of the retail load in the state--will hinge on the ease, transparency and pricing of access to transmission.

II. PROTEST TO ENTERGY TRANSCO PROPOSAL

For the above-discussed reasons, AECC supports the development of a Regional Transmission Organization ("RTO") embracing Arkansas and the largest practicable area surrounding it. To that end, AECC has participated as a member of the Southwest Power Pool ("SPP") in its ongoing effort to develop an Independent System Operator ("ISO") proposal to be submitted to the Commission, as well as in various Commission proceedings involving regional reliability issues.^{3/} AECC is committed to advancing truly regional solutions to transmission problems, and looks forward to participating in the Commission's forthcoming inquiry into RTO

^{3/} AECC is an intervenor in several ongoing proceedings involving regional issues, such as *First Energy Operating Companies*, Docket No. EC99-53-000, *Capacity Benefit Margins in Computing Available Transmission Capacity*, Docket No. EL99-46-000, *North American Electric Reliability Council*, Docket No. ER99-2012-000, and *Southwest Power Pool*, Docket Nos. ER99-2038-000, ER99-1375-000, and ER99-783-000. Moreover, AECC is also participating in the "Motion to Intervene, Protest, and Motion for Summary Disposition of the Transmission Dependent Utility Systems" filed in this docket to raise other issues with the Entergy Transco proposal which will affect all similarly situated transmission dependent entities.

policy.

Nevertheless, AECC must protest *this* proposal. No amount of deception can conceal the fact that Entergy proposes to retain its transmission monopoly by owning the proposed Transco that will be dominated by the concern to maximize the returns on investment in nearly 30,000 MW of Entergy generation, one of the largest aggregations of generating capacity in the United States. If the proposed Transco can be deemed “independent,” it is difficult to conceive of a scheme that could be fashioned by any other vertically integrated utility which would not.

From the outset, Entergy would own the Transco, lock, stock (literally) and barrel. The overarching and undeniable fact is that the Transco would be economically integrated into a single enterprise whose prosperity would depend upon the success of Entergy generation activities. Entergy cannot have it both ways. It cannot argue, on the one hand, that its Transco would be superior to a truly independent system operator because it would be “incented” [sic] by the profit motive deriving from ownership of the assets, but also argue, on the other hand, that Entergy’s ownership of the Transco would have no influence on its operation. Entergy’s Petition fails utterly to make a plausible case for the proposition that its proposed Transco would not, in fact, have every incentive to prefer the generation of its parent and distribution affiliates over non-affiliated transmission users such as AECC.

Entergy asks the Commission to find that this Transco proposal is consistent with all relevant ISO Principles, especially those involving independence, governance, and conflicts of interest. Petition at 2. Entergy avers that the requested order will foster interest in the participation in the scheme amongst other transmission owners and other relevant stakeholders, enabling Entergy to better “market the Transco structure to other transmission owners. Petition at

3.^{4/} It will be interesting to see if responses to Entergy's filing substantiate the notion that other transmission owners may be disposed to turn over their transmission assets over to Entergy.

This is not to say that the proposal is likely to find no support among transmission owners, however.^{5/} Some will likely find it an attractive model for local "transcos" that would enable them to perpetuate their transmission monopolies, too.

Notwithstanding Entergy's pious claims to interest in furthering development of a useful RTO policy, the timing of the proposal betrays its true objective. On the eve of the Commission's issuance of a rulemaking to guide the debate about how to harness RTO policy to nurture competition in generation markets, Entergy seeks to preempt the debate with a proposal transparently calculated, at best, to make Entergy the dominant player in a market somewhat larger than its present one and, at worst, to insulate its existing transmission monopoly from meaningful reform. Moreover, Entergy's citation to the ISOs which were approved by the Commission is disingenuous to the concepts set forth in those orders.^{6/}

^{4/} Entergy presumptuously urges the Commission to grant its Petition in 3 months so it can spend the next 27 months attempting to market the proposal and obtaining regulatory approvals. Even assuming Entergy's timetable, it would be ambitious at best for the Transco to be put in place by 2001.

^{5/} If no other transmission utility in the South files in support of Entergy's proposal, thereby substantiating Entergy's claim that Commission approval will foster regional development, the Commission should dismiss this assertion as mere wishful thinking by Entergy.

^{6/} *Pacific Gas & Electric Company*, 77 FERC ¶ 61,204 (1996)(Order Conditionally Authorizing Establishment of an Independent System Operator)("California ISO"); *Atlantic City Elec. Co.*, 77 FERC ¶ 61,148 (1996) (Order Directing Amendment to Proposals to Restructure the PJM Interconnection and Providing Guidance)("PJM"); *New England Power Pool*, 79 FERC ¶ 61,374 (1997) (Order Conditionally Authorizing Establishment of an Independent System Operator and Disposition of Control over Jurisdictional Facilities)("NEPOOL"); *Central Hudson Gas & Electric Company*, 83

(continued...)

The hypocrisy of Entergy's proposal is underscored by the company's conduct in the transmission arena. A charter member of the SPP, Entergy abandoned the pool in 1997, when it became evident that meaningful transmission reform on a region-wide basis might threaten Entergy's dominance. Entergy has also been the subject of a number of complaints alleging maladministration of its open access tariff.^{7/} Entergy is particularly ill-suited to pose as a champion of improved transmission access.

In short, any number of reasons counsel prompt, forthright rejection of Entergy's proposal. The proposal should not be allowed to become a distraction from the important business of securing genuine reform of transmission in the service of invigorating competition in wholesale generation markets. Similarly, Entergy's motives should not impair the legislative efforts to effectuate retail access policy in Arkansas.

A. The Entergy Proposal Fails To Comply with the Commission's Principles Regarding Independence, Governance, and Conflicts of Interest in Accordance with the Commission's ISO Principles.

As Entergy points out, independence is "the bedrock upon which the ISO must be built if stakeholders are to have confidence that it will function in a manner consistent with the Commission's pro competitive goals." Petition at 18, citing *Atlantic City*, 77 FERC at 61,574. Entergy's Transco would not meet any plausible definition of "independence," and must be

^{6/} (...continued)
FERC ¶ 61,357 (1998) (Order Conditionally Authorizing Establishment of Independent System of Independent System Operator)("New York ISO").

^{7/} See, e.g., *Aquila Power Corp. v. Entergy Services, Inc.*, Docket No. EL98-36-000; *Clarksdale Public Utilities Commission v. Entergy Services, Inc.*, Docket No. EL98-72-000; *Clarksdale Public Utilities Commission v. Entergy Services, Inc.*, Docket No. EL98-73-000; *South Mississippi Electric Power Ass'n v. Entergy Services, Inc.*, Docket No. EL98-74-000; *Sam Rayburn G&T Electric Cooperative v. Entergy Gulf States, Inc.*, Docket No. EL99-6-000.

rejected on these self-asserted grounds.

1. The Present Ownership of the Transco Underscores Its Dependence on Entergy.

The Transco is to be owned by the “Member Companies”, which as of the filing of the petition consists of the five Entergy Operating Companies. In other words, Entergy currently owns 100% of its Transco.

This is hardly a situation that suggests that the Transco will or can be independent. Nor could Entergy square its proposed ownership with the explicit wording of ISO principle No. 2: “An ISO and its employees should have *no* financial interest in the economic performance of any power market participant.” (Emphasis added.)^{8/}

Nor could Entergy square its suggestion that its Transco will be financially independent with the regulations of this Commission. As the Commission codified in Order No. 889 and 889-A, for an entity that is not an exempt wholesale generator, the term “affiliate” is defined as “another person which controls, is controlled by, or is under common control with, such person.” See 18 C.F.R. § 37.3(f)(2)(1998) (citing to 18 C.F.R. § 161.2(a) (1998)). “Control” is further clarified as “includ[ing], but not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. *A voting interest of 10 percent or more creates a rebuttable presumption of control.*” See 18 C.F.R. § 161.2 (b)(1998) (emphasis added).^{9/}

^{8/} See also, *NEPOOL*, 79 FERC at 62,587 (emphasis original), citing Order No. 888 at 31,731 (Continued participation in the pension plan and additional exceptions to the divestiture rule were not permitted, as the Commission stated “ISO employees must ‘in fairly short order’ be independent of *all* financial ties to any market participants.”)

^{9/} “The Commission generally uses 10 percent as an indicator of affiliate relationship, and
(continued...) ”

It is also clear that the Entergy Transco could not meet the definition of independence implicit in the Public Utility Holding Company Act (“PUHCA”), 15 U.S.C.S. § 79a *et seq.* Section 2(a) of the PUHCA defines the ownership of ten percent of the voting securities as the basis for the type of control by a holding company that PUHCA was fashioned to regulate.

Against this backdrop, Entergy’s assurances on this concern are clearly insufficient. For example, Entergy states that the Board of Directors would only have a “nominal fiduciary role” to the equity owners of the Transco, and that the Transco “will behave no more like an affiliate of the Member Companies than an ISO behaves like an affiliate of a participating transmission owner.” Petition at 21. Entergy also promises not to name the Entergy-controlled Transco “The Entergy Transco.” *Id.* at fn. 23.^{9/} One would think that if Entergy was so confident that it could overcome the traditional definitions of affiliates inherent in the PUHCA and the Federal Power Act (“FPA”), it would have presented a reputable economist’s testimony to that effect, to satisfy its burden of proof.

Finally, as a practical matter, it is clear that the existing Entergy management has every financial incentive to exert itself to promote the prosperity of all of the Entergy enterprise. The Entergy Transco’s new management would not deviate from this motivation. A Transco wholly owned (or owned by substantial majority) by such an enterprise simply cannot be called

^{9/} (...continued)
we will require it here as well. This adjustment is necessary to reduce the potential for affiliates of large IOUs to block NEPOOL action and to assure more parity in governance issues amongst Participants.” *NEPOOL*, 79 FERC at 62,585 citing *Morgan Stanley Capital Group, Inc.*, 72 FERC ¶ 61, 082 at 61,436 (1996) and *The Power Company of America, L.P.*, 79 FERC ¶ 61,067 at 61,325-12 & n.4 (1997).

^{10/} As presented, ABCC would prefer that the name reflect the actual ownership of the Transco, so that others would know exactly who they are dealing with.

independent by merely changing its name and corporate structure. No amount of smoke and mirrors can conceal that the proposed Transco would have the power and incentive to do all it could to advance the prosperity of Entergy's generation and retail distribution businesses.

2. Future Membership in the Transco

Entergy's Petition suggests that the Initial Membership^{11/} may include others. Specifically, at page 12 Entergy states that Initial Membership is achieved by a transfer of networked transmission assets to the Transco by the transmission owning entity.^{12/} According to Entergy, such a transfer will be through contribution, long-term lease, or similar conveyance such that the granting company will not be able to exercise any control or authority over the operation of the Transco, and subject to regulatory approval and the terms of existing obligations on such facilities.^{13/} The value of the assets will be converted to a percentage of the sum of all Capital Contributions of the Transco, and Membership Interests will apportioned according to this percentage. Thus, should another transmission utility join and contribute assets amounting to 1/10th of all of the Transco's assets, Entergy's Membership Interest would be reduced to

^{11/} Capitalized terms including, but not limited to, Initial Membership, Super Majority, and Capital Contributions, are given the same meanings as set forth in the Entergy LLC Agreement attached to its Petition.

^{12/} In one of the few instances in which the Transco proposal exercises proper judgment, Entergy states that the transfer of transmission assets will be at net depreciated book value. Petition at 12, fn 14. However, Entergy then waters this commitment down by asking that the Commission consider different valuations should Entergy convince a state Commission into imposing a premium value on transmission assets. Such a valuation is within the plenary jurisdiction of the FERC, and accordingly, it should be made clear that any valuation will be made according net depreciated book value, without exception.

^{13/} It is unclear at this juncture exactly how Entergy proposes to transfer even its own assets to the Transco. Thus, AECC must reserve judgment on this portion of the Transco proposal until Entergy commits to one method of making contributions.

90%.^{14/}

Under Article III of the LLC Agreement, there are two means by which Membership can be extended after the initial formation of the Transco. First, under Section 3.2, an existing Member may make an additional contribution only upon approval of the Board and a Super Majority (defined as 75%) of the Members. Alternatively, under Section 3.3, the Board may authorize the issue of additional Interests to Members and Non-Members alike; provided, however, that such issuances must first be offered to existing Members in accordance with Section 3.3(b). This section gives existing Members the opportunity to bid and purchase such interests, subject only to the Board's acceptance. An Interest obtained through either Section 3.2 or 3.3 would be in exchange for Capital Contributions and the Membership percentages would be adjusted accordingly.

Regardless of who may ultimately join the Transco (should it be created), it is clear that there would still be affiliate relationship problems between owner and management that would contravene ISO Principle No. 2.

Moreover, the Initial Members—and more specifically Entergy—will have an undue competitive advantage over any prospective Member. First, under Section 3.2, an existing Member will have the ability to increase its percentage of ownership interests in the Transco should other entities attempt to dilute its control. For example, an entity with an ownership interest of greater than 75% would be able to reject (via Super Majority vote) offers of other Members who attempt to increase their respective Membership share. Second, under Section

^{14/} It is impossible to reconcile Entergy's statement that "the Transco is an incentive-driven company that will be self-funded," Petition at 20, with the Capital Contribution scheme set forth in the LLC Agreement. The Transco will initially be entirely funded by transmission owners assets.

3.3, a Member could exclude new entrants to the Transco by competitively outbidding the entity. Even if a new Member was permitted to join the Transco, Entergy could revert to Section 3.2 to restore its Super Majority status, if necessary.

The undue competitive edge of an existing Member—and specifically Entergy—underscores the lack of independence of the Transco.

3. The Transco Board

The proposed provisions for establishment of the Board of the Transco also confirm that management of the Transco cannot be independent of Entergy ownership. Specifically, Article V of the LLC Agreement provides that the candidates for the initial Board are to be selected in accordance with a “Board Selection Process” by which the Members select a search firm to locate a slate of candidates. The Initial Members would then select the seven initial Board members from the list provided by the search firm. Petition at 9. When vacancies on the Board arise, Entergy proposes that the Board could fill such vacancies or the new Board member would be chosen through a similar process as the initial Board. Entergy also includes the caveat that “if at some point more than 50% of the interests in Transco are held by Member Companies that are not current transmission-owning entities, then vacancies on the board will be filled by a vote of the Member Companies rather than the remaining board members.” Petition at 10.

Even before the first candidate is chosen, Entergy has proposed a scheme which will favor its interests. By committing to be solely responsible for the selection and hiring of an executive search firm who will then select candidates for the Board, Entergy realizes that it can exert substantial control of the process. Entergy could, for example, hire the same search firm that it uses, has used, or plans to use, for its other business ventures. Entergy could also influence the search firm’s behavior and ultimate selections by its corporate stature. AECC

submits that if the goal is independence, the Board selection process must originate from non-Entergy sources. If not, all of the procedures which follow are tainted.

It is also highly inappropriate for the Members to be the only parties to select Board members without consideration of other stakeholder's interests. Clearly, the Members will select Board members that will serve their individual interests if given the opportunity to do so. Such control violates the independence principle and impairs the ability to implement a fair and impartial governance structure.

Notable in that regard is the Commission's consideration of the proposal for the California ISO, which required that the governing body of the ISO and the PX consist of various industry interests. 77 FERC at 61,810-61,817. In approving that requirement, the Commission stated that "voting structure should be guided by two overriding principles: (1) no one class should be able to block or veto action; and (2) no two classes should together be able to form a sufficient majority to make decisions." *Id.* at 61,817.

Entergy also proposes that the Member Companies may remove Directors for cause by a super majority (75%) vote of the Members *without any action of the Board itself*. See LLC Agreement, Section 5.8 (a)(ii). Thus, Entergy proposes that the owners can hire and fire, removing any doubt to whom Directors would owe their allegiance.

4. Transfer of Employees to the Transco

Entergy also proposes that the Member Companies that are currently engaged in the operation, maintenance, restoration and construction of transmission facilities will be transferred to the Transco, and will sever their ties with the Member Companies. Petition at 9. Currently, this commitment simply means that the Transco will start with a group of operations personnel derived entirely from the Entergy companies.

It is easy to see why Entergy would favor such a proposal, inasmuch as Entergy would have its own personnel operating the grid. If independence is a true objective of Entergy, it should make an effort to transition to include non-Entergy (or other Member Company) personnel in the operations of the Transco as soon as feasible.

5. Market Monitoring Unit

The intentional lack of independence is further underscored by the proposal that the Transco create and administer the entity that is to monitor it the Market Monitoring Unit (“MMU”). It is, of course, wrong for market monitoring efforts to be controlled internally within the Transco. It is equally inappropriate, but of no surprise, that the complaint procedures contained in the plan are devoid of penalties for offending parties.^{15/} The explanation is quite simple: Entergy does not want other stakeholders to have a meaningful recourse against the Transco (or Entergy).

Entergy’s proposal to eliminate the MMU in five years after the initial operations of the Transco is as puzzling as it is unjustified. See Appendix 3 at XII. It would seem counterintuitive to terminate the MMU, if it truly would act as an honest monitor.

6. Planning

Entergy provides a general description of a preliminary Annual Regional Planning Summit (“Summit”) in which the Transco will collect data, evaluate requests for service from new facilities, perform transmission studies, and formulate a regional transmission plan. See Appendix 4. Although Entergy states that the Summit “will allow all stakeholders to participate

^{15/} Assuming the MMU had the ability to levy penalties, it would be quite difficult for the MMU’s administrator, the Board of Directors, to impose and collect a fine from the Member Companies where the Member Companies also have the ability to terminate the Board Member.

in critical planning decisions,” Petition at 30, the Summit process merely ensures that a meeting of transmission owners will be held each year to decide which facilities will be built and which will not. There is no obligation for the Transco to take the needs of the non-transmission owning entities into account (*i.e.*, a Transco-wide joint planning process), only an obligation to disclose its plan and to allow other entities to attend.

Meaningful participation by all stakeholders in the planning and expansion of the RTO is crucial to a regional approach. In contrast, the Summit process reflects a commitment to *exclude* others. ^{16/}

7. Summary

For the reasons discussed above, it is clear that the proposed Transco cannot meet the independence requirements applicable to a *bona fide* ISO. Instructive in this regard are the interpretations of the PUHCA on what constitutes “controlling influence” of an entity. In early interpretations of the PUHCA, the courts stated that:

the existence of ‘controlling influence’ is a factual determination to be ascertained in the [SEC’s] expert judgment by the weighing of circumstantial evidence and the drawing of reasonable inferences therefrom.[¹] The principal factors in determining this from the special circumstances of each case for the statutory exemption are the size and extent of the companies involved, the extent of the intercompany relationship, the ownership and distribution of securities, and the parent company’s part in the organization and development of the subsidiary company together with the past relationships and, because of the public interest and the purposes of the Act involved, consideration must be given to the relationship between the two companies for financing, service and construction contracts, etc.]

^{16/} The Commission should take no comfort in Entergy’s statement that if a market participant does not like what results from the Summit process, it can go finance the desired facilities itself or seek relief pursuant to Section 205 or 211 of the FPA. See Appendix 4 at I.

American Gas & Electric Co. v. SEC, 134 F. 2d 633 at 642 (D.C. Cir. 1943), *cert denied* 63 S. Ct. 1318 (1943)(citations omitted). Entergy's proposal offends most, if not all, of these factual considerations.

B. The Entergy Code of Conduct is Clearly An Inadequate Substitute for Demonstrated Independence of Entergy's Owned and Operated Transco.

Entergy attempts to bolster its chances that the Commission will approve its Transco by stating that it will adopt a Code of Conduct. Petition at 10. This is required in any event by ISO Principle No. 2 and is not a substitute for the separate requirement, also set forth in that principle, that the ISO be financially independent—a requirement the Entergy Transco cannot meet.

Moreover, a weak Code of Conduct and a mere promise to develop procedures to deal with violations is not enough to mitigate the situations which will arise in the daily operations of the grid. Former Entergy employees (now Transco employees) will have constant interaction with current employees of the Entergy generation and distribution functions. What could result are egregious violations of the Code of Conduct such as "tipping", as was addressed by a recent Commission Order. *See Communications of Market Information Between Affiliates*, 87 FERC ¶ 61,012 (April 1, 1999).

C. The Entergy Transco Proposal Does Not Contain Enough Information for the Commission To Determine that the Transco is Consistent with the ISO Principles.

1. Absent a Section 203 and 205 Filing, the Commission Should Not Advance Entergy's Ability To Force the Transco Proposal Upon Other Market Participants.

Entergy states that "[p]roviding the requested declaratory order also will be consistent with the two-step process that the Commission used in proceedings seeking approval of ISOs." Petition at 6. Particularly, Entergy states that the Commission used a preliminary order to

determine whether four ISO proposals (California ISO, PJM, NEPOOL, and New York ISO) met the Commission's eleven ISO Principles and how the applicants could structure the ISO subsequently. Petition at 7.

While it is true that in all four instances, the Commission issued the conditional order authorizing the ISO, all of those "first-step" orders were based upon actual and concrete applications made pursuant to Sections 203 and 205 of the FPA. Moreover, although it is true that two of the ISO's used declaratory petitions in conjunction with the respective 203 and 205 applications, both were presented in distinguishable pretexts. In the California ISO, a declaratory order was issued prior to the 203 and 205 filing, but only for the limited purpose of delineating local and transmission facilities to be included in the ISO. *PG&E*, 77 FERC ¶ 61,077 (1996); *see also* 77 FERC ¶ 61,204 at 61,318. In the PJM ISO, the member companies filed a declaratory order for the limited purpose of disclaiming jurisdiction over the transfer of control in the operation of the PJM facilities of the ISO. *Atlantic City Elec. Co.*, 77 FERC at 61,560. Neither of those declaratory order proceedings could be characterized as a "marketing tool" used to solicit additional interest in the ISO. Nor was the purpose to effectuate a "cram-down" of the convictions of one transmission entity. Rather, they were concrete proposals offered by the multiple stakeholders of the relevant ISO.

The Commission's resources should not be devoted to vague, ill-crafted and one-sided proposals such as submitted by Entergy in this docket. Indeed, AECC believes that the Commission must refuse to consider Entergy's Transco proposal to send a strong message to Entergy and others that RTOs are not a means of enhancing monopoly power.

2. Entergy Has Not Made a Case for Pricing Incentives Which Comports with ISO Principle No. 8.

AECC strenuously objects to the implication that Entergy is somehow entitled to "some form of performance based ratemaking ("PBR")" when the Section 205 filing is made. Petition at 29. Entergy avers that PBR "will incent the Transco to maximize throughput, relieve congestion, and enhance reliability" and accordingly seeks guidance as to whether the Commission would permit such a scheme so that Entergy could use such information in marketing of the Transco. *Id.* AECC believes that the Commission must stop Entergy dead in its tracks on this concept and make clear that under no circumstances would the Commission grant a broad based PBR to a Transco applicant.

ISO Principle No. 8 states that "[a]n ISO's transmission and ancillary services pricing policies should promote the efficient use of and investment in generation, transmission, and consumption. An ISO or an RTG of which the ISO is a member should conduct such studies as may be necessary to identify operational problems or appropriate expansions." Order No. 888 at 31,732. Entergy apparently construes this ISO Principle as an invitation to impose above cost-based rates. There is no justification for this position particularly in light of the fact that Entergy, through its affiliate Transco, would remain a transmission monopolist.

III. MOTION FOR SUMMARY DISPOSITION AND ALTERNATIVE MOTION TO HOLD PETITION IN ABEYANCE OR FOR HEARING

For the reasons stated above, Entergy's Petition should be rejected by the Commission as being both premature and inconsistent with the ISO Principles set forth in Order No. 888. AECC accordingly moves that the Commission summarily deny the April 5, 1999 Petition in its entirety, without prejudice to Entergy refiling a Petition in accordance with the Order Nos. 888 and 888-A ISO Principles and/or subsequent Commission's policy on RTO's.

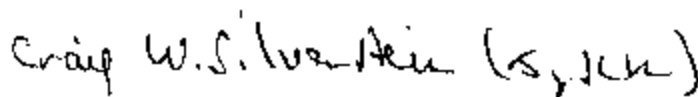
Alternatively, AECC moves to hold the Petition in abeyance pending Section 203 and 205 filings by Entergy. Good cause exists to defer Commission action until the proponents of

this regional transmission company are more clearly defined (*i.e.*, whether this is an Entergy-only proposal or will other entities join) and details necessary to the Transco are provided. However, if the Commission determines that holding this Petition in abeyance is not appropriate at this juncture, AECC requests that this matter be set for formal hearing with full discovery rights so that stakeholders are given an opportunity to meaningfully evaluate the proposal.

IV. CONCLUSION

WHEREFORE, AECC respectfully requests that the Commission (1) grant AECC's motion for summary denial of Entergy's Petition for Declaratory Order, or, in the alternative, (2) grant AECC's motion to hold Entergy's Petition in abeyance pending a Section 203 and 205 filing, or (3) set the matter for formal hearing procedures, and (4) grant all other relief requested herein or as may be deemed appropriate by the Commission.

Respectfully submitted,

Handwritten signature of Sean T. Beeny in black ink, reading "Sean T. Beeny (S, JCH)".

Sean T. Beeny
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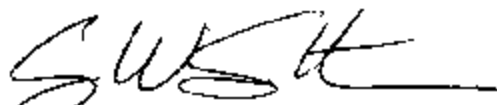
Attorneys for
Arkansas Electric Cooperative Corporation.

May 5, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 5th day of May, 1999.



Craig W. Silverstein

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