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August 27, 1999

BY FEDERAL EXPRESS

Honorable David P. Boergers
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1-A
Washington, D.C. 20426

Re. Entergy Services, Inc
Docket No. EL99-57-000

Dear Mr. Boergers:

Enclosed for filing please find the Petition for Rehearing by the Arkansas Public Service Commission, the City Council of New Orleans, and the Louisiana Public Service Commission

Please return to me three (3) copies, file-marked, in the enclosed prepaid postage, self-addressed envelope.

Thank you for your assistance in this matter.

Sincerely,

Mary W. Cochran
General Counsel

Enclosures

cc: Official Service List

OFFICE OF THE GENERAL COUNSEL
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ARKANSAS PUBLIC SERVICE COMMISSION

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FILED
OFFICE OF THE SECRETARY

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FEDERAL ENERGY
REGULATORY COMMISSION

ENTERGY SERVICES, INC.)

DOCKET NO. EL99-57-00#

**PETITION FOR REHEARING BY
THE ARKANSAS PUBLIC SERVICE COMMISSION
THE CITY COUNCIL OF NEW ORLEANS, AND
THE LOUISIANA PUBLIC SERVICE COMMISSION**

Pursuant to Section 313 of the Federal Power Act, 16 U.S.C. §825I and to Rule 713 of this Commission's Rules of Practice and Procedure, the Arkansas Public Service Commission ("Arkansas Commission" or "APSC"), the City Council of New Orleans, Louisiana ("City Council" or "CNO"), and the Louisiana Public Service Commission ("Louisiana Commission" or "LPSC") (jointly, "State Regulators") hereby file their Petition for Rehearing of the Commission's Order in this proceeding.

Background

The subject of this docket is a request by Entergy Services, Inc. ("Entergy"), for a declaratory order that its proposed affiliate for-profit transmission company ("transco") meets this Commission's criteria for an independent system operator ("ISO") as enunciated in Order No. 888. In particular, Entergy requested guidance as to whether its proposed "passive ownership" of the transco would satisfy Order No. 888's independence, governance, and conflict of interest standards.

The State Regulators timely filed their notices of intervention and protests, requesting that Entergy's request be denied.

On July 30, 1999, a four-member majority of the Commission issued its Declaratory Order, in which it concluded as follows:

Passive ownership of a transmission company by one or more power market participants is acceptable if designed, in all respects, to meet the independence and other requirements of the ISO principles.

Slip op. at 14. Commissioner Massey dissented, arguing that the Entergy's request should be denied.

The State Regulators do not object in principle to the concept of a properly structured for-profit regional transmission organization. However, the declaratory order procedure sanctioned by the majority in this proceeding is unlikely to result in the timely development of such an entity. The State Regulators therefore respectfully that this Commission grant rehearing on its Order and deny Entergy's request.

Argument

I. A declaratory order in this case should not be granted because it will not terminate a controversy or remove uncertainty.

This Commission's Rule 207 authorizes petitions for declaratory order when the order requested will "terminate a controversy or remove uncertainty." The majority's Declaratory Order in this proceeding not only does not serve those purposes but in fact creates controversy and uncertainty. This uncertainty extends not only to the ISO criteria of Order No. 888 but also to the standards enunciated in the Commission's Notice of Proposed Rulemaking on Regional Transmission Organizations ("RTO NOPR") on May 13, 1999.

With respect to Order No. 888's ISO principles, the Order raises, rather than answers, questions. Initially, it should be noted that the majority's conclusion is essentially a tautology, i.e., the proposed transco will meet the ISO standards if it meets the ISO standards. Obviously, this "conclusion" provides no real guidance, although it offers Entergy and other affiliate transco proponents the opportunity for self-serving interpretations as discussed below.

Additionally, the Order does not provide substantive guidance on key issues but merely invites Entergy (and, by implication opposing intervenors) to address those issues in a future RTO application. Those issues include:

- A "more complete description" of how a stakeholder committee to appoint the transco board will be selected and operated.

- Whether the transco board's fiduciary duties will extend to the transco owners' non-transmission interests;
- How Entergy's proposed bidding system for securing additional equity capital will work;
- The purpose of the proposed bidding system; and
- The ability of employees to move freely between the transco and its owner companies.

There are other critical issues that the majority did not address, apparently because of the paucity of detail in Entergy's proposal. Perhaps the most important issue that the majority has not addressed is the meaning of "passive" in terms of ownership and independence; there is simply no explanation supporting the majority's apparent conclusion that passive ownership is acceptable under the ISO independence standards. The uncertainty of how these issues should ultimately be addressed is highlighted by the majority's finding that the proposed transco "could comply with the independence requirement of the ISO principles." Slip op. at 9; emphasis added. The majority's decision to defer substantive discussion of these important questions will only lead to further controversy in the Entergy transco application when and if it is ultimately filed.

This lack of guidance is compounded by the lack of clarity as to the relationship of the ISO principles discussed in the Order to the criteria set forth in the RTO NOPR. The NOPR proposed a rule limiting RTO ownership by market participants to one percent and queried whether there should be a different standard for passive ownership. Yet the majority's Order in this docket seems to hold that, for passive ownership, one-hundred percent ownership may be acceptable. There is no discussion as to why or how this meets the independence standard or whether multiple ownership should be required. These omissions are particularly troublesome in light of the NOPR's recognition that market participants may not trust affiliate RTOs even with protection mechanisms similar to those approved by the majority in this case. The Commission's lack of guidance on these issues invites future controversy.

In its Order, the majority stresses that it is addressing Entergy's proposal only in light of Order No. 888's ISO principles and not under the principles outlined in the NOPR. The Order further states that Entergy will have to meet all the applicable RTO rules once they are promulgated. This reasoning, of course, begs the question: How does the majority's Order "terminate a controversy" or "remove uncertainty" if the guidance it offers may be superseded by new rules before Entergy's ultimate transco proposal is filed?

In his dissent, Commissioner Massey addressed this question as follows:

Even though the order says we are only interpreting the ISO principles, many will believe the Commission has made the policy call in the RTO Rule on passive ownership. Indeed, I believe that this order is fully intended to send a signal, despite language in the order to the contrary, that this Commission has made a policy call that will have applicability under the RTO Rule.

Dissent, slip op. at 3; emphasis in the original. It is difficult to believe that this Commission would make such an important policy call before it has even received initial comments on the issue in its RTO NOPR. However, it is also difficult to believe that it would signal to Entergy, in this proceeding, that it should devote its resources to developing its "passively owned" transco if it may reverse that ruling in a later proceeding. It would appear that, either way, someone's time will have been wasted - that of the commenters in the RTO NOPR or Entergy's.

Entergy's petition for declaratory order should be denied upon rehearing. However, if the Commission determines that it should further consider the petition, it should, at a minimum, defer any substantive ruling until it has reviewed the comments of *all* interested parties and addressed them in the NOPR docket. In the interim, Entergy should be directed to begin discussions with the stakeholders in its region as to the most appropriate form of RTO for that area.

II. Entergy's proposal will not further the development of an independent regional transmission entity in the Entergy service area.

As noted above, Commissioner Massey in his dissent expressed concern that the majority's Order will be interpreted as announcing a policy decision that "passively owned" affiliate transcos will meet the independence standards for RTOs. The prescience of those

remarks is demonstrated by Entergy's announced intent to proceed with developing its proposal. As shown in a news release obtained from Entergy's web site, attached as Exhibit A, Entergy views the majority's Order as providing "positive guidance" which has "encouraged [Entergy] and other parties to further develop this plan...."

Entergy's continued pursuit of this proposal is problematic for several reasons. First, the proposal was developed without significant input from other stakeholders in the region. As noted by Commissioner Massey, the level of opposition indicated by the protests in this proceeding suggests a "profound lack of trust." Dissent, slip op. at 2. In its RTO NOPR, the Commission recognized that an RTO should "be independent in both reality *and* perception." Slip op. at 120. (emphasis supplied) The majority's Order is silent as to how that principle can be reconciled with Entergy's proposal in this docket. The State Regulators share Commissioner Massey's concern as to how market participants will be able to have any confidence that Entergy's affiliate transco will further competitive goals. For example, the majority directs Entergy to address "whether it is appropriate for the market monitoring unit to be internal to the Transco." Slip op. at 14. Yet the protests filed in this docket raise the specter that any market monitoring by Entergy's affiliate transco will be perceived as the proverbial fox guarding the henhouse.

A second concern is that Entergy's pursuit of its affiliate transco to the exclusion of other, more generally accepted, regional transmission alternatives will delay the prompt development of an independent transmission entity in this region. The majority's Order in this docket holds open the possibility that a "passively owned" affiliate transco may *not* meet the requirements of either Order No. 888 or the final RTO rules. If that possibility is real, Entergy may be faced with an order *disapproving* its affiliate transco in the 2000-01 time frame. It is unclear what course of action Entergy may take in that eventuality, but it is likely that it will have to begin another ISO proceeding "from scratch," and the development of fully competitive markets in Entergy's service area will be further delayed.

As Entergy has noted, certain of the states in which it operates plan to initiate retail competition in the 2001-02 time frame. More specifically, Arkansas' Electric Consumer Choice Act of 1999, codified at Ark. Code Ann. §23-19-101 *et seq.*, provides for retail

competition to begin January 1, 2002, although implementation may be delayed under certain circumstances until June 30, 2003.¹ Ark. Code Ann. §23-19-103(a). The Act also requires that Entergy and other transmission owning utilities be members of an independent transmission entity ninety days before competition is implemented, if one in Arkansas or the surrounding region has been approved by this Commission. Ark. Code Ann. §23-19-103(g). The requirements of the Arkansas Act do not suggest, however, that the affiliate transco concept, as advocated by Entergy, should be hastily and uncritically approved. To the contrary, those provisions necessitate "getting it right" in the first instance so that competition may be promptly and effectively implemented. The majority's Order in this proceeding frustrates that goal by, on the one hand, encouraging Entergy to pursue its affiliate transco while, on the other hand, holding open the possibility it will be eventually disapproved. The goal of timely RTO development would be better served by denying Entergy's petition and encouraging it to develop a more widely accepted form of regional organization, based on input from all interested stakeholders.

Finally, the State Regulators are constrained to echo Commissioner Massey's dissent in regard to the majority's treatment of the State Regulators' concerns:

This virtually unanimous state commission opposition in the Entergy region is very significant and should not be ignored. Given that we spent three full days in outreach hearings on the RTO NOPR extolling our sensitivities to state concerns, it seems inexplicable that we turn a deaf ear to their pleas in this case.

Dissent, slip op. at 2. The majority's seemingly casual disregard of the "near unanimous opposition" of Entergy's retail regulators does not lend credibility to the protestations of sensitivity cited by Commissioner Massey. Nor does it comport with the Commission's recognition, in those same outreach hearings, of state commissions' superior knowledge and understanding of the conditions in their regions. Perhaps, as Commissioner Massey suggests, the majority's decision in this case was based in part on its "zeal to consider

¹The Arkansas Act was lodged in the record of this docket by the Commission's grant of the motion of Arkansas Electric Cooperatives Corp.

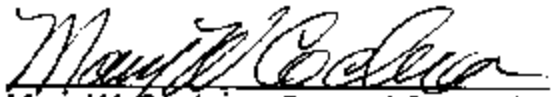
transcos." Dissent, slip op. at 4. The majority's "zeal" to address national policy issues is perhaps understandable, but it does not justify dismissing the states' concerns based on their knowledge of local conditions in specific cases involving regional issues.

Conclusion

The majority's grant of Entergy's request for a declaratory order in this proceeding is both premature and ill-conceived. As discussed above, it will frustrate, not further, both the purpose of declaratory orders under Rule 207 and the prompt development of regional independent transmission organizations in the region of which Entergy is a part. In the words of Commissioner Massey, "If we don't get the independence rules right, we are lost."

The State Commissions respectfully request that the Commission grant rehearing in this proceeding and deny Entergy's request for declaratory order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Mary W. Cochran, certify that a copy of the Petition for Rehearing by the Arkansas Public Service Commission, the City Council of New Orleans, and the Louisiana Public Service Commission has been served on all parties of record by U.S. mail on this 27th day of August, 1999.


Mary W. Cochran



Date: July 29, 1999

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Entergy Proceeding With Transco Following Positive Guidance from FERC

New Orleans -- Entergy (NYSE: ETR) said today it would proceed with developing its Transco proposal following encouraging guidance received on the proposal from the Federal Energy Regulatory Commission (FERC).

"FERC's guidance on passive ownership affirms our contention that market driven independence is a viable alternative to not-for profit ISO's. A structure that is profit-driven but that separates control from ownership can be a winning formula for establishing an independent transmission company," said Frank Gallaher, senior vice president, generation, transmission and energy management.

On Wednesday FERC voted to issue a declaratory order giving guidance to Entergy on elements of its plan for the independent operation of its transmission assets. In April, Entergy filed a market-driven Transco plan with FERC and asked for guidance about whether the plan meets FERC's principles for independence.

The Entergy plan was a framework to ask for guidance on whether the Transco structure proposed by Entergy would satisfy the FERC's independence and governance criteria. Entergy indicated that more details of the plan would be forthcoming based on FERC guidance and input from other participants.

On several issues, FERC indicated the concept could be sound but would need further detail before a definitive judgment could be reached.

A central feature of Entergy's plan is passive ownership in the Transco by member companies who would transfer transmission assets to the new entity. On this issue FERC said, "Entergy's proposal, if modified to address certain issues, could comply with the independence requirement of the ISO principles."

"FERC has provided leadership and guidance to Entergy and other companies committed to pursuing the Transco concept. The Commission's guidance has encouraged us and other interested parties to further develop this plan and bring back to the FERC a regional transmission company proposal that will further the development of a competitive market place," Gallaher added.

On the issue of selection of the Transco board of directors, FERC noted that "the board selection process is important for assuring independence," and that Entergy's proposal to use a stakeholder committee to select the board was acceptable, but indicated a more complete description of the process is needed.

FERC asked for more information on the Transco's methods for raising additional capital and on the ability of employees to move between the Transco and member companies.

On the issue of contracting with member companies, FERC told Entergy that it and other member companies must ensure that "contracting with the proposed Transco does not result in any undue favoritism or discrimination among potential suppliers."

Following FERC guidance, Entergy will now work with other interested parties to complete a more formal submittal to FERC and to applicable retail regulatory commissions. Entergy is committed to having an independent entity in operation by January 1, 2002.

Entergy, headquartered in New Orleans, is a U.S. based global energy company with power production, distribution operations and related diversified services. Entergy distributes energy to more than 2.5 million customers in the U.S.



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