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May 5, 1999

Via Hand Delivery

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N. E., Room 1-A
Washington, DC 20426

Re: **Entergy Services, Inc., Federal Energy Regulatory
Commission Docket No. EL99-57-000**

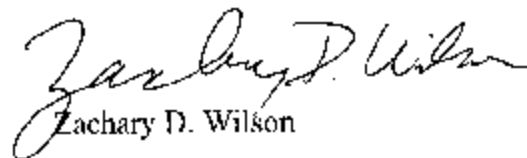
Dear Mr. Boergers:

Enclosed for filing are an original and fifteen (15) copies of a Petition to Intervene of Arkansas Citics in the above-captioned docket.

Please return a copy of the file-marked pleading to me by the same courier.

Thank you for your assistance.

Cordially,


Zachary D. Wilson

Enclosures

cc: Service List
Clients

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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Entergy Services, Inc.

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Docket No. EL99-57-000

**PETITION TO INTERVENE OF ARKANSAS CITIES TO THE PETITION OF
ENTERGY SERVICES, INC. FOR DECLARATORY ORDER REGARDING
COMPLIANCE OF TRANSCO PROPOSAL WITH
APPLICABLE ISO PRINCIPLES**

Pursuant to Rule 213 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385, 213 and 214 (1998), Arkansas Cities consisting of the cities of Benton, Bentonville, North Little Rock, Osceola, Piggott, Prescott, Siloam Springs, Arkansas, and the Clarksville Light and Water Company, Conway Corporation, Hope Water and Light Commission, City Water and Light Plant of the City of Jonesboro, Arkansas, Paragould Light and Water Commission and West Memphis, Arkansas Utilities Commission hereby submit their Petition to Intervene to the Petition of Entergy Services, Inc. for Declaratory Order Regarding Compliance of Transco Proposal with Applicable ISO Principles. Based on the factors discussed in this Petition to Intervene, Arkansas Cities respectfully request that they be granted intervention as a party to this proceeding, and that the Commission circumspectly

consider Entergy's Petition, give Entergy and other parties guidance on ISO Principles 1, 5 and 6, while deferring consideration of the balance of Entergy's Petition until subsequent filings.

Arkansas Cities are all Arkansas municipal corporations of the first class, political subdivisions of the State of Arkansas, or a nonprofit corporation operating a municipal utility system, all of which own and/or operate electric generation, transmission, and/or distribution systems serving customers within the State of Arkansas. All are either wholesale production customers of Entergy, transmission customers of Entergy, or are located within control areas interconnected with Entergy. The individuals named in Section III hereof are the elected or appointed representatives of Arkansas Cities responsible for Arkansas Cities operations and constitute the service list in this proceeding.

I. OVERVIEW and BACKGROUND

Entergy filed its Petition on the 5th day of April, 1999. Arkansas Cities had been advised by Entergy representatives, with some specificity during late 1998, to expect the Petition filed in this proceeding. The Transco concept became a technical issue in Arkansas during the consideration by the General Assembly of the State of Arkansas of legislation designed to restructure the electric utility industry in the state and permit retail competition. Act 1556 of 1999 of the General Assembly of the State of Arkansas enacted April 15 1999 is a comprehensive restructuring of electric utility legislation in the state.

Among other things, Act 1556 of 1999 Section 1 establishing Arkansas Code Annotated § 23-19-103 (g) authorized jurisdictional utilities to seek the approval of an "independent transmission company" before appropriate regulatory authorities so that it could be considered by the Arkansas Public Service Commission as one option for the development of a regional transmission group, a condition within Act 1556 of 1999. This specific Transco Proposal of Entergy, therefore, is not unexpected, and within the State of Arkansas, the concept and ideas have been circulated amongst respective parties for some time. The importance of the issues that will be considered with the creation of an entity such as this Entergy Transco with its multi-state geographic region makes comprehensive consideration of it in any subsequent filings mandatory.

Nevertheless, Arkansas Cities have no objection to the consideration in the context of a Request for Declaratory Relief of a limited number of the issues that Entergy seeks to have considered in this proceeding. Issues 1, 5, and 6 in § II. B. of this pleading which track Entergy's designations are so critical that early guidance on them would be helpful to all parties. However, Principles 2, 3, 4, 7-11 can be deferred until subsequent Entergy Transco filings are made.

II. ARGUMENT

A. Introduction: Transcos Offer Certain Advantages Over ISOs

Entergy propounds that "in certain areas and depending on the circumstances of the particular transmission-owing entity, a Transco is prefer-

able to an ISO." (p. 14) The justification rests primarily on three contentions: (1) that the management of the Transco "will be driven, through appropriate incentives, to minimize costs, maximize throughput, achieve efficient levels of congestion and reliability, and expand the transmission grid when economically justified." (p. 15); (2) that "integrating the operation of the system with the maintenance, engineering, construction and restoration of that same system".... "will ensure that the system is operated, maintained, and expanded in the most efficient manner."; (ibid.) and (3) that vesting asset management in the same entity that operates the grid will provide "further independence from the interests of the Member Companies." (p. 16)

Entergy also claims that, as between an ISO and a Transco, "it is not the Commission's role to determine the best solution that could be devised; rather, it is only necessary that the approach chosen is a just and reasonable one." (p. 17)

Arkansas Cities point out to the Commission that even if a Transco may likely be more "efficient" in some theoretical, economic sense, than, say, an ISO, Entergy has presented no evidence in this docket either to support this conjecture or to measure its value. Ultimately, as it does when a complete rate filing is presented to it, the Commission will have to weigh the alleged economic "efficiencies" of a Transco against other, traditional regulatory objectives, such as non-discrimination, rate stability and predictability and other facets of rates that are traditionally considered in the context of the just and reasonable standard.

Arkansas Cities also strongly caution against the Commission's approval of any Transco which encompasses only Entergy affiliates. For Transmission-Dependent Utilities (TDUs) already served by Entergy under its OATT, the most important aspect of an Entergy-sponsored ISO or Transco is the extension of the size of the geographic market economically within reach of TDUs. This benefit is likely to outweigh any operational "efficiencies" claimed for the Transco structure, and this major benefit cannot be realized if Entergy's affiliates are the only stakeholders in the Transco. Arkansas Cities urge the Commission to indicate clearly to Entergy that approval of a Transco will be conditioned upon its serving a significantly larger geographic market with non-pancaked rates than is currently accessible through Entergy's OATT.

In any event, the Commission should confine its pronouncements at this stage only to those few ISO principles about which Entergy's Transco proposal provides sufficient detail. Arkansas Cities believe that only with respect to Principle No. 1 (Governance), Principle No. 5 (Control of Facilities) and Principle No. 6 (Rules for Constraints) does Entergy's filing provide sufficient detail or raise important procedural issues to justify Commission response. The Commission should not, as Entergy suggests, make the broader finding that the proposal is a just and reasonable approach with respect to any of the eleven principles, subject merely "to review of final details and arrangements". (p. 17).

B. The Commission Should Determine Whether any Basis Exists for this Transco Proposal to Satisfy the Applicable ISO Principles 1, 5 and 6. Items 2, 3, 4, and 7-11 can be Deferred Until the Filing of a More Specific Proposal

1. Principle No. 1: Governance should be structured in a fair and non-discriminatory manner.

Principle No. 1, the independence principle, requires the ISO to be structured independently of any individual market participant or class of market participants. The purpose of this principle is to ensure fair and non-discriminatory access to all transmission services and ancillary services for all users of the system. The independence principle "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." *Atlantic City*, 77 FERC at 61,574. That principle also has "overarching significance" because "it may affect the ISOs ability to comply adequately with many of the other guiding principles."

The terms for the governance and structure of the Transco are set forth in the Transco's LLC Agreement that is attached as Appendix 2 to the Transco proposal. As discussed therein, the Transco proposal adopts the so-called "independent" board, rather than the "stakeholder" board model. Under the independent board model, the Transco will be governed by seven independent board members with expertise in the areas necessary to govern an electric transmission company.

Perhaps the most critical element of the fair and just creation of an in-

dependent Transco board is whether or not public entities who may or may not own transmission systems have a vehicle for influencing the operation and management of the system. While Arkansas Cities have no basic fundamental objections to the concept as explained in II.A., how it is implemented is critical to its success.

Entergy's discussion at page 19 (first paragraph) says: "The independent board approach was accepted by the Commission in the NEPOOL ISO, the New York ISO and the Midwest ISO." (notes omitted) Entergy makes it sound as if there has been no controversy in implementing the independent board approach. This is not the case. The fact that FERC has approved, in general, an "approach" hasn't meant the absence of a lot of wrangling in specifying the "details." Indeed, FERC just issued an order in the NY ISO case rejecting the composition of the Management Committee that was the result of a settlement process directed by the Commission itself. [87 FERC ¶ 61, 135 (April 30, 1999; ER 97- 1523-000 et al.)]

Also note that the "independent" board approach approved by FERC with respect to the above-named ISOs is fundamentally different than what Entergy requests here. In these ISO's, transmission users (as well as other "interested parties," such as environmentalists) are represented on management and operation committees as a counter-balance to the interests of transmission owners. In the Transco, none of these parties seem to be represented in terms of the daily management of operations, etc. Perhaps, in

terms of the long-term planning function, Entergy envisions a role for the "market participants." In any event, on this important issue, the Commission should compel the parties to this proceeding to address in paper proceedings a specific governing arrangement satisfactory to all market participants.

Principle No. 2: An ISO and its employees should have no financial interest in the economic performance of any power market participant. An ISO should adopt and enforce strict conflict of interest standards.

ISO Principle No. 2 requires that the officers and employees of the Transco be financially independent of the transmission owners and all market participants. The Transco proposal generally appears to be an attempt to satisfy ISO Principle No. 2. Entergy's proposal to prohibit Transco employees, officers and agents from maintaining a financial interest in the economic performance of any power market participant, to adopt the provided code of conduct, and to adopt an Order 889 compliant code of conduct concerning access to information appears to be adequate. Note however, adequacy of this condition depends entirely upon how such requirements are enforced. As long as the Transco and this Commission vigorously police the Transco's compliance of the Transco's employees, officers and agents with the codes of conduct, they will remain adequate. If the codes are merely given "lip service" they will be useless to protect competition. Accordingly, Arkansas Cities urge the Commission to ensure in any final order approving the Transco that safeguards be imposed that will ensure that the Transco's codes of conduct are enforced. However, due to the complexities of the questions of independ-

ence, the Commission should defer any comment on this issue until the filing of a more specific proposal.

3. Principle No. 3: An ISO should provide open access to the transmission system and all services under its control at non-pancaked rates pursuant to a single, unbundled gridwide tariff that applies to eligible users in a non-discriminatory manner.

ISO Principle No. 3 requires the ISO to provide non-discriminatory, open access service to all eligible users at non-pancaked rates. Entergy has supplied a variety of reasons why, at this stage of the development of its Transco proposal, "it has not been possible to formulate a proposed tariff for the Transco." (p. 22) Some transmission owners, for example, may be concerned that a single grid-wide rate based on the merged embedded costs of all participating transmission owners will produce significant cost-shifting among owners. In this request for a declaratory order, Entergy proposes "that the Commission recognize this general no cost-shifting policy as an acceptable standard for developing independent regional transmission organizations (pa. 24)." Arkansas Cities urge the Commission to make no pronouncements, general or otherwise, on the relationship between Entergy's current filing and Principle No. 3. Existing ISOs have developed a variety of Commission-accepted mechanisms for dealing with (or transitioning through) cost-shifting and other pricing issues. There is absolutely nothing in the Entergy filing specific enough about these issues to justify at this stage the Commission's making any pronouncements about rates, terms or conditions of a non-

existent tariff proposal, other than already encompassed in the language of Principle No. 3.

Arkansas Cities further point out that "cost-shifting" may be a moot issue if Entergy files a Transco composed only of Entergy affiliates. Arkansas Cities, as discussed above, are not necessarily in favor of such a limited Transco, as it is not likely to be a substantive improvement upon the existing Entergy OATT.

Additionally, Entergy's Transco proposal provides that the Transco's transmission rates "are expected to be devised through a joint effort among Entergy and the other member companies, as well as other stakeholders and state regulatory authorities." Transco proposal at page 21. Control by Entergy's operating company subsidiaries over transmission would violate the undertaking implicit in the Transco proposal that the Transco will be independent. If the Transco is to be managed by an independent board, that entity should develop the Transco's transmission rates after appropriate discussions with interested parties. Nevertheless, due to the complexity of rate issues and the need for rate issues to be considered in the context of a specified set of transmission assets, consideration of this issue should be deferred until subsequent filings.

4. Principle No. 4: An ISO should have the primary responsibility in ensuring short-term reliability of grid operations. Its role in this responsibility should be well-defined and comply with all applicable standards set by NERC and the regional reliability council.

Principle No. 4 requires the ISO to have the primary responsibility for ensuring short-term reliability of grid operations. Ensuring reliability is of critical importance in approving ISO proposals, and the promotion of a reliable transmission system is one of the goals of the ISO principles. See *Midwest ISO*, 84 FERC at 62,158.

Entergy's Transco proposal indicates at page 23 that the Transco's members, initially Entergy's operating company subsidiaries, will determine "the procedures governing the Transco's exercise of operational control over the transmission facilities and the procedures for responding to emergencies." This dictation of procedure is not consistent with Entergy's assertion that it would contribute its facilities to the Transco or if that is not possible that it would enter a long term lease to the facilities and in any event that the Transco will operate and the control its transmission facilities as if it owned them in fee. Entergy has not however explained how this dictation of the processes to be used by the Transco is consistent with the existence of an independent Transco. Again, this issue should be deferred until the filing of a detailed proposed arrangement is made.

5. Principle No. 5: An ISO should have control over the operation of the interconnected transmission facilities within its region.

While there is no basic objection to the Transco controlling the transmission systems of its Member Companies, Entergy's general comments in

this section have generated some confusion as to whether or not existing load control areas will be eliminated as Entergy develops the Transco proposal. The Commission should direct Entergy to maintain existing control areas unless and until receiving approval for changes in control area boundaries following a specific filing for authority with the Commission. No operational changes should be made in control area functions until all aspects of the Transco are concluded. FERC, on this issue, should specifically rule on the operational methods to be employed in rearranging control areas prior to the filing of a specific proposal, inviting further input from the parties.

6. Principle No. 6: An ISO should identify constraints on the system and be able to take operational actions to relieve those constraints within the trading rules established by the governing body. Those rules should promote efficient trading.

ISO Principle No. 6 requires the ISO to identify and remedy system constraints efficiently and effectively. An important goal of ISO Principle No. 6 is to encourage ISOs to allocate scarce capacity in a way that "promotes efficiency in the market place." *Midwest ISO*, 84 FERC at 62,163 (citing Order No. 888 at 31,730-32). Principle No. 6 also requires that the ISO provide ancillary services.

There is absolutely no information in the Petition about which the Commission can frame any guidance beyond that embodied in the language of the Principle itself. Until the membership of a Transco is determined, and until the details are provided about how the Transco will control sufficient generation facilities to enable it to perform balancing and ancillary services activities, it will not even be known where and to what extent constraints exist.

Nevertheless, this issue is a matter of such importance that further argument should be requested of the parties.

7. **Principle No. 7: The ISO should have appropriate incentives for efficient management and administration and should procure the services needed for such management and administration in an open, competitive market.**

Because Entergy and other Member Companies (if any) will be supplying certain management services to the Transco, the Commission will of necessity need to review how these relationships will be handled. Since there is nothing in the Petition detailing these arrangements, no action by the Commission is necessary at this time.

8. **Principle No. 8: An ISO's transmission and ancillary services pricing policies should promote efficient use of and investment in generation, transmission, and consumption. An ISO or a RTO of which it is a member should conduct such studies as may be necessary to identify operational problems or appropriate expansions.**

Petition provides no information about pricing policies which the Commission can use to frame any guidance beyond that embodied in the language of the principle itself. This, therefore, is a matter that must be left to a later, detailed filing.

9. **Principle No. 9: An ISO should make transmission system information publicly available on a timely basis via an electronic information network consistent with the Commission's requirements.**

Under the Transco proposal, Entergy proposes to set up an OASIS consistent with the requirements of Order No. 889. This has not occurred yet, and therefore, is a matter that must be left to a later, detailed filing.

10. Principle No. 10: An ISO should develop mechanisms to coordinate with neighboring control areas.

Until the membership of a Transco is determined, it is not possible to know what the neighboring control areas will be or what coordinative procedures may be necessary. This, therefore, is a matter that must be left to a later, detailed filing.

11. Principle No. 11: An ISO should establish an ADR process to resolve disputes in the first instance.

Entergy proposes to develop ADR procedures similar to those contained in the Commission's open access tariff. The exact terms of the Transco's ADR process are not final. This, therefore, is a matter that must be left to a later, detailed filing.

III. Service List

Arkansas Cities requests full intervenor status in these proceedings. The service list in this Docket for Arkansas Cities should include the following names:

Mr. Ron Brown
Jonesboro City, Water & Light
P. O. Box 1289
Jonesboro, AR 72401

Ms. Connie Woodard
N.L.R. Electric Department
P. O. Box 159
North Little Rock, AR 72119

Mayor Terry Coberly
City of Bentonville
117 West Central
Bentonville, AR 72712

Mr. Richie Arnold
Conway Corporation
P. O. Box 99
Conway, AR 72032

Mayor Lynn A. Moore
P. O. Box 607
Benton, AR 72018

Mr. Charlie Button
City Light & Water System
117 West Central
Bentonville, AR 72712

Mr. Hugh Harrison
Clarksville Light & Water
P. O. Box 1807
Clarksville, AR 72830

Mayor Patrick Hays
City of North Little Rock
P. O. Box 5757
North Little Rock, AR 72119

Mr. Terry Burnett
Finance Officer, City of Osceola
P. O. 443
Osceola, AR, 72370

Mayor Garland Holcomb
City of Piggott
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Piggott, AR 72454

Mayor Howard Taylor
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Mr. Wyman Morgan
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Mayor Dickie Kennemore
City of Osceola
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Osceola, AR 72370

Mr. Larry Watson
General Manager
Paragould Light & Water
Paragould, AR 72450

Mr. Ted Bellers
City of Piggott
194 West Court
Piggott, AR 72454

Mr. Larry Stockton
Prescott Water & Light Plant
P. O. Box 676
Prescott, AR 71857

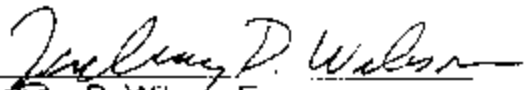
Mayor William H. Johnson
City of West Memphis
P. O. Box 1728
West Memphis, AR 72301

Mr. Stephen Merchant
Stone & Webster Consultants
900 19th Street, N. W. – Suite 600
Washington, D. C. 20006-2105

WHEREFORE, Arkansas Cities respectfully requests that the Commission grant them full intervenor standing in this proceeding and grant the relief requested in the body of this Petition.

Respectfully submitted,

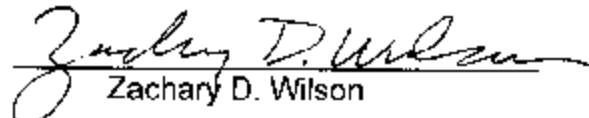
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Attorneys for Arkansas Cities

CERTIFICATE OF SERVICE

I, Zachary D. Wilson, Attorney for Arkansas Cities, do hereby certify that I have caused a copy of the foregoing Petition To Intervene to be served upon all parties of record this 5th day of May, 1999.


Zachary D. Wilson