

UNITED STATES OF AMERICA
Before The
FEDERAL ENERGY REGULATORY COMMISSION

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MAY 5 1999
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

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Docket No. EL99-57000

**Motion of the
COMPETITIVE TRANSMISSION ASSOCIATION, INC.
To Intervene In Support of Petition for Declaratory Order**

Pursuant to Rule 214 of the Federal Energy Regulatory Commission ("FERC" or the "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.214, the Competitive Transmission Association, Inc. ("CTA"), a not-for-profit corporation established under District of Columbia Law, hereby intervenes in support of the petition of Entergy Services, Inc. (including the Entergy Operating Companies, collectively "Entergy") (the "Entergy Petition") for a declaratory order regarding the application of this Commission's ISO Principles to independent transmission companies. In support thereof, CTA respectfully states:

I. Notices

All correspondence and communications regarding this motion should be addressed to the following:

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II. CTA's Interests

CTA was established "to encourage the development of independent electric transmission entities which will serve commercial, industrial, business and personal economic interests."¹ CTA therefore has a vital and unique interest in the outcome of this proceeding, which is not represented by any other entity in the electric utility industry. CTA's participation in this proceeding is therefore in the public interest. Accordingly, CTA should be permitted to participate fully in this proceeding to protect its interests.

III. Background

On April 5, 1999, Entergy filed with the Commission a Petition for a Declaratory Order providing Commission guidance on its proposal to create a "Transco," an independent, incentive-driven transmission company that will control and operate Entergy's transmission system and the transmission assets of the entities other than Entergy that may in the future become members of the Transco. Entergy asked the Commission to provide guidance on the compatibility of the Transco with the Commission's ISO Principles set forth in Order Nos. 888 and 888-A.² Specifically, Entergy asked the Commission to issue a declaratory order that its Transco proposal is consistent with all relevant ISO Principles, especially those involving independence, governance and conflicts of interest.

¹ CTA Articles of Incorporation Sec. 3 (filed and accepted D.C. Bus. Reg. Admin. Nov. 5, 1998).

² *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, FERC Stats. & Regs., Regulations Preambles, ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles, ¶ 30,148 (1997), *order on reh'g*, Order No. 888-B, 81 F.E.R.C. ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 F.E.R.C. ¶ 61,046 (1998), *appeal pending*, No. 97-1715 (D.C. Cir. 1998).

IV. CTA's Support of Entergy's Petition

CTA supports the Entergy Petition, in that CTA believes that at this stage in the restructuring of electric markets, the Commission should act to encourage and guide transco formation by addressing its ISO Principles in the context of transcos.³ CTA believes that a prompt Commission response to the Entergy Petition will simplify and clarify the duties of other entities interested in transco development, in the absence of which future transco proposals may not exhibit the characteristics of independence, appropriate governance structure and avoidance of conflicts of interest which the Commission wishes to promote.

The Commission should view the Entergy Petition as an opportunity to "remove uncertainty,"⁴ not simply as a request by a single utility system for guidance. The public and the transmission customer, owner and operator community will benefit from guidance, and the Commission is urged to offer as much information as possible concerning both technical filing requirements and its transmission independence and governance goals.

A. Transcos offer important advantages over ISOs in the context of a competitive electric market.

CTA believes that transcos provide a means of permitting a vertically integrated utility to divest itself of control over its transmission system in an economic manner and more profoundly than can an ISO, which still owes the transmission owner a fiduciary duty.⁵ An ISO may, as a non-profit entity, face difficulties in financing transmission plant improvement and expansion,

³ In expressing its support for the Commission's guidance on this issue so important to the development of a competitive electric industry marketplace, CTA builds upon comments originally expressed by the Gridco Commenters in Docket No. PL98-5-000.

⁴ See 18 C.F.R. § 385.207(a)(2)(1998).

and therefore may act simply as an allocator of scarcity. The establishment of a separate transmission company dissolves the interest of the generator in transmission generally, and allows the transmitter to aggressively – and profitably – enforce non-discriminatory open access. In addition, the increasing reliability challenges facing transmission generally can best be addressed by businesses which have the capital, the incentive and the fiduciary duty to their owners to resolve capacity problems, not simply reallocate existing assets.

Moreover, the development of transcos can unlock significant value for their owners while producing substantial economic benefits to ratepayers. Establishing a transco can protect utility investors from costs of service unbundling while complying fully with Standards of Conduct under FERC Order No. 889. A transco can produce regulatory benefits by cleanly dividing Commission-regulated transmission-only facilities from state-regulated distribution facilities. A transco can also produce the major regulatory benefit of ratemaking simplification.

A transco can assist in providing regulators with an additional basis to permit market-based rates for existing generation resources, and can be given rate incentives to maximize open-access utilization of its system. A transco will also have substantial economic incentives to maintain and enhance system reliability, reduce transmission bottlenecks and to promote technological advances in transmission service, because transmission will be a transco's only source of revenue.

⁵ Order No. 888 at 31,731.

B. The Commission can assist the industry in developing workable transco proposals by providing guidance on the compatibility and applicability of the ISO Principles to for-profit transmission entities.

There exists a substantial diversity of backgrounds and interests of those interested in transcos,⁶ and the industry as a whole is waiting for clear guidance from the Commission. Indeed, the Commission itself has acknowledged that transcos can offer a viable alternative or complement to the ISO structure currently in place in several regions of the country.⁷ Without clear guidance from the Commission, transco development will be delayed, and the public will be denied the benefits of this type of independent open-access transmission entity. The logical conclusion to which pro-competitive, pro-open-access parties have come is that the Commission should encourage and guide transco formation, in part by addressing the extent to which its ISO Principles will and should apply to transcos, as the Entergy Petition requests.

C. Transcos significantly advance Commission policies and objectives embodied within the ISO Principles.

In Order No. 888 the Commission stopped short of mandating that vertically integrated utilities divest themselves of ownership of transmission facilities, but indicated that it would "accommodate other mechanisms that public utilities may submit, including voluntary corporate restructurings (e.g., . . . separate corporate divisions, divestiture), to ensure that open-access transmission service occurs on a non-discriminatory basis."⁸ In declining to mandate complete

⁶ *Inquiry Concerning the Commission's Policy on Independent System Operators*, Conference Comments of Chairman Hoecker, Tr. 3, 93; M. Douglas Dunn, Tr. 43; David K. Owens, Edison Electric Institute, Tr. 20, 51-52, 62; Roy Thilly, Wisconsin Public Power Inc. System, Tr. 23-24, 46; Phil Harris, PJM Interconnection L.L.C., Tr. 30; John Procario, Cinergy Services, Inc., Tr. 58; Richard Haigh, Transmission Alliance, Tr. 284 (April 15, 1998).

⁷ Order No. 888-A at 30,250 n. 220.

⁸ Order No. 888 at 31,654-56. In this respect, by definition, any effort to develop an independent transco will by its very nature exceed the Commission's requirements.

corporate separation of generation from transmission, the Commission determined that ISOs, in which transmission owners merely transfer operational control of their transmission facilities, could potentially provide some benefits to the industry in achieving the goal of open-access, non-discriminatory transmission service.⁹

To provide guidance regarding the formation of ISOs, the Commission set forth eleven principles for evaluating ISO proposals. At the same time, however, the Commission explained that “although we discuss some of these issues in this Rule, we will further develop our policies in other proceedings as well to accommodate and encourage more efficient market structures.”¹⁰ At this stage in electric industry restructuring, transcos are receiving an increasing amount of attention as viable and workable alternatives to ISOs. However, to date, the Commission has not had the opportunity presented by the Entergy Petition to address the important issues of independence, governance and conflicts of interest in the context of transcos. Only one transco proposal, the FirstEnergy-ATSI transco, is now before the Commission,¹¹ and the Commission has not yet entered any order on that recently filed proposal.

An independent transmitting utility entity which actually owns (either outright or by virtue of legal control), as well as operates, a transmission grid but has no interest in generation resources on that grid will have an immediate economic incentive – and need – to promote full open access, and not simply comply with minimum governing open-access requirements in

⁹ Order No. 888 at 31,652.

¹⁰ *Id.*

¹¹ Docket No. EC99-53-000.

force. The Commission should therefore address transco development, ownership and organizational issues, and provide guidance as to applicability of the ISO Principles to transcos.

CTA has evaluated the ISO Principles in the context of transcos and believes that transcos not only are consistent with the objectives embodied within the ISO Principles, but also significantly advance Commission policies to promote efficient, reliable, non-discriminatory open-access transmission service:

1. *Fair governing structure:* CTA believes that a for-profit independent transco is a fair, open means of administering open-access transmission systems. While the Commission has recognized that a non-profit entity might be able to fairly administer a transmission system, the Commission has never ruled, and should now affirm explicitly that non-profit status is not a requirement for a transmission owner, lessee or operator.¹²
2. *No interest in power market participant:* As the Commission noted in the ISO Principles, even an ISO will need time to separate itself from the transmitting utilities which establish it.¹³ Indeed, it has taken substantial time for the Midwest Independent Transmission System Operator to separate itself from its member utilities,¹⁴ and the establishment of transmission independence in California has also consumed significant

¹² See, e.g., *Pacific Gas & Electric Corp.*, 81 FERC ¶ 61,122 Part I (1997).

¹³ Order No. 888 at 31,731.

¹⁴ See *Midwest Independent Transmission System Operator, Inc.*, 85 FERC ¶ 61,250 (1998).

time.¹⁵ This is no less true of transcos, which may take time to fully spin off from their formerly-integrated utility owners. Further, in this regard, the Commission should clarify that the prohibition against an ISO holding an interest in power markets does not prohibit a transco from accomplishing its intended ownership of transmission facilities.

3. *Non-pancaked, open-access service:* As a for-profit, private sector entity, a transco's size should be primarily defined by the transmission market which the transco is to serve. The market for transmission service, and not pre-existing maps, should determine transco size.
4. *Short-term reliability assurance:* A transco which operates its transmission system can assure short-term transmission system reliability no less capably than can an ISO. In addition, a transco can contribute to long-term reliability by constructing, expanding and maintaining its system, which, as a for-profit entity, it has the incentive to do.
5. *Control over interconnected facilities:* A transco that acts as its own transmission controller can control the operations of its interconnected transmission system as can an ISO.

¹⁵ See *California Power Exchange*, 85 FERC ¶ 61,263 (1998).

6. *Identification and relief of constraints:* A transco can more readily identify constraints than an ISO, and has the incentive to relieve them to increase throughput to maximize profit. In addition, a transco can raise the capital to construct transmission to relieve constraints. A non-profit ISO has no investors to provide capital for that purpose.

7. *Management and administrative incentives:* Even minor performance, service or managerial inefficiencies, which would cost an ISO nothing, reduce a transco's revenue and ultimate profit. For example, "refunds" payable by an ISO ultimately must be recovered in rates, because an ISO has no equity return account or funds. This principle of regulatory and service accountability, therefore, is part and parcel of the transco organizational structure.

8. *Pricing policies should promote investment and efficiency:* Unlike a market neutral non-profit ISO, which can act only as a blind allocator of those facilities which already exist, a transco can directly raise capital for productive transmission purposes, and must promote efficiency in order to survive and profit.

9. *Dissemination of information:* A transco has an affirmative incentive to assure that transmission access, capacity and pricing information is widely available to all potential market participants, or else its throughput may be

reduced. Unless a transco aggressively makes this information available broadly, the transco will fail to capture all of the revenue available to it.

10. *Coordination with neighboring areas:* If a transco fails to coordinate its operations with those of neighboring systems to a very high degree of service and precision, the transco will be placing its own revenue at risk. Therefore, a transco has an incentive to promote its own revenue realization by assuring the greatest possible degree of usable interconnection.
11. *Establishment of an ADR process:* A transco could implement an ADR plan no less readily than an ISO, or the Commission itself. Moreover, a transco has a greater incentive than an ISO to implement effective ADR procedures, because a transco facing a potential dispute with a customer has an economic incentive to avoid the uncertainty and delay of litigation.

D. The Commission should not narrowly construe the ISO Principles so as stifle innovation in the development of competitive, open-access transmission entities.

While transcos do not per se violate the ISO Principles, the ISO Principles were primarily developed to apply to and guide purely non-profit allocators of existing transmission capacity. They do not provide, and were not intended to provide, an economic incentive to construct and expand transmission in order to use existing generation resources more efficiently, relieve constraints, open bottlenecks, and allow all markets to take full advantage of the Commission's

open-access policies. The Commission has implicitly acknowledged that non-profit, non-title holding ISOs are transitional entities which facilitate the movement of certain utilities and tight pools toward open access.¹⁶ As such, the ISO Principles should not preclude the application of appropriate guidance principles to transcos.

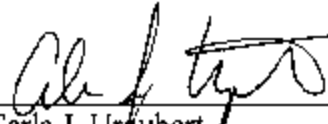
CTA believes that transcos can substantially further the objectives embodied within the ISO Principles. Nonetheless, CTA also believes that it would be unwise for the Commission to construe the Principles narrowly so as to discourage and prevent the development of these independent for-profit transmission entities. To do so would stifle the creation of innovative new rate structures which may produce lower costs for consumers through greater efficiency and competition.

¹⁶ Order No. 888 at 31,730.

WHEREFORE, the Competitive Transmission Association, Inc. respectfully requests that the Commission issue a declaratory order in response to the Entergy Petition finding that transcos comply with the ISO Principles to the extent applicable, and further that its motion to intervene be granted and that it be afforded full status as a party in this proceeding.

Dated: Washington, DC
May 5, 1999

Respectfully submitted,
COMPETITIVE TRANSMISSION
ASSOCIATION, INC.



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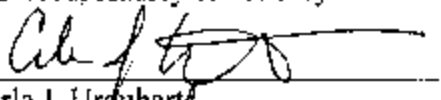
Its Attorneys

Certificate of Service

I certify that on this date I caused the original and fourteen (14) copies of this document to be served on the Commission, and further caused a copy of this document to be served on each party to and participant in this proceeding appearing on the Commission's official service list compiled by the Secretary.

Dated: Washington, DC
 May 5, 1999

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