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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

OFFICE OF THE
SECRETARY
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Entergy Services, Inc.)

Docket No. EL99-57-000

MOTION TO INTERVENE AND PROTEST OF
RALPH R. MABEY, CHAPTER 11 TRUSTEE
FOR CAJUN ELECTRIC POWER COOPERATIVE, INC.

Ralph R. Mabey, Chapter 11 Trustee for Cajun Electric Power Cooperative, Inc. ("Cajun"), by and through counsel, James D. Pembroke and Thomas L. Rudebusch, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, files this Motion to Intervene, and Protest ("Motion") in the above-captioned proceeding regarding the request for a declaratory order approving a "Transco" ("Petition") submitted by Entergy Services, Inc. ("ESI"), on April 5, 1999, and states as follows:

I. PRELIMINARY STATEMENT

1. This Motion is filed pursuant to Sections 205 and 206 of the Federal Power Act ("FPA"), 16 U.S.C. §§ 824d, and 824e (1988), to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.214 (1998), and to the Commission's Notice of Filing in this proceeding issued on April 7, 1999.

2. The persons to whom correspondence, pleadings, and other papers in relation to this proceeding

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should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R.

§ 385.203 (1998):

Victor J. Elmer
Vice President - Operations
Cajun Electric Power Cooperative, Inc.
10719 Airline Highway
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Cajun further requests that a courtesy copy of all pleadings, correspondence and testimony be sent to the following person:

A. Kell McInnis, Esq.
Cajun Electric Power Cooperative, Inc.
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II. DESCRIPTION OF PARTIES

3. Cajun is a Louisiana cooperative corporation engaged in the generation, transmission and sale of electricity to, among others, the eleven rural electric cooperative which are its members. Cajun is a generation and transmission cooperative which, through its members,

serves consumer-owners representing approximately 1,000,000 people in a large portion of rural Louisiana. Cajun's primary purpose is to provide an adequate and reliable supply of economic power and energy to meet the full requirements of its member cooperatives. In addition, Cajun engages in bulk power transactions with other entities to provide for the economic operation of its system.

4. On December 21, 1994, Cajun filed a petition seeking relief under Chapter 11 of the United States Bankruptcy Code. In re Cajun Electric Power Cooperative, Inc., United States Bankruptcy Court for the Middle District of Louisiana, Civil Action No. 94-2763-B2, Bankruptcy Case (Chapter 11) No. 94-11474. On August 1, 1995, the United States District court for the Middle District of Louisiana ordered the appointment of a Chapter 11 Trustee in the bankruptcy case. On August 23, 1995, the District Court approved the appointment of Ralph R. Mabey as the Chapter 11 Trustee for Cajun. On August 30, 1995, Ralph R. Mabey qualified to serve as the Chapter 11 Trustee in the cited bankruptcy case.

5. ESI is the agent for certain affiliated operating companies which generate, transmit, distribute, purchase and sell electric power and energy at wholesale and retail in large areas of the Middle South region.^{1/} The

^{1/} Entergy Gulf States, Inc., Entergy Louisiana, Inc.,
(continued...)

operating companies are each a "public utility" as defined in Section 201 of the FPA, 16 U.S.C. § 824(e) (1998), and are subject to the jurisdiction of this Commission. ESI and the operating companies are wholly-owned subsidiaries of the Entergy Corporation (collectively, "Entergy").

III. MOTION TO INTERVENE

6. On April 5, 1999, ESI submitted to the Commission for filing a request for a declaratory order. Entergy's request seeks approval of its "Transco" proposal, which is alleged to be an independent, incentive-driven transmission company that will control and operate Entergy's transmission system and the transmission system assets of the entities that may become "Members" of the Transco. Entergy's request seeks to demonstrate, inter alia, that the Transco proposal is consistent with the Commission's eleven principles for an Independent System Operator ("ISO"), as established in Order No. 888.^{1/}

7. Cajun has entered into various agreements with Entergy pursuant to which Cajun has provided open access network transmission service by ESI and its corporate

^{1/} (...continued)
Entergy Arkansas, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

^{2/} Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, III FERC Stats. & Regs. ¶ 31,036 (1996) ("Order No. 888").

affiliates. Cajun owns transmission facilities which are integrated within the Entergy transmission system. Cajun also participates in wholesale markets by purchasing and selling power and energy, inter alia, with Entergy. Thus, ESI's Transco proposal could be aimed at including Cajun as a member of the Transco. Entergy's Transco proposal can affect the cost and availability of transmission service to Cajun, as well as the cost and availability of power in wholesale markets.

8. Cajun's participation in this proceeding is necessary and appropriate to the administration of the FPA, and will be in the public interest. Cajun's interests will be directly affected by the outcome of this proceeding, and will not be adequately represented by any other party. Cajun, therefore, requests that the Commission grant its intervention, and make it a party to this proceeding for all purposes.

IV. PROTEST

9. Entergy seeks the guidance of the Commission on Entergy's proposal to create a Transco, which is "an independent, incentive-driven transmission company that will control and operate Entergy's transmission system and the transmission system assets of the entities that will become members of the Transco." Petition at 1. Cajun is vitally interested in a regional transmission solution to the issues of pancaked transmission rates and unduly discriminatory

terms and conditions of service. Cajun welcomes any legitimate steps to provide such a regional transmission solution, and will do its part to implement such a solution. Entergy's Transco proposal has some features which could provide a solution, depending on how the proposal is implemented. At this juncture, Cajun protests Entergy's Transco proposal to the extent it does not represent a clear step forward.

10. The Commission has recognized that the electric utility industry has long been characterized by undue discrimination through the use of transmission market power to hinder competition in power markets. Order Nos. 888 and 889 constituted a major step toward remedying the undue discrimination and market power present in the industry, through the open access transmission, functional unbundling and OASIS reporting requirements. These orders represent the standard by which Entergy's Transco proposal must be evaluated, as Entergy appears to acknowledge. See, e.g., Petition at 19.

11. Entergy requests that the Commission determine that the Transco proposal is consistent with the eleven principles for evaluating an ISO. *Id.* But, a threshold issue is whether the Transco proposal is a step backward from the requirements of Order Nos. 888 and 889. If Entergy made the Transco proposal on a stand-alone basis, and the Petition can certainly be read in this way, then

Entergy must demonstrate that it is consistent with or superior to the terms and conditions of the pro forma open access transmission tariff.

12. Entergy has not made that showing with respect to the Transco proposal. The fundamental concepts expressed in the Transco proposal have not been shown to be just and reasonable. There must be much greater examination of the concepts before the Commission should take any affirmative action on the draft unexecuted agreement and "bare-bones" description of the Transco proposal. The Commission should order a hearing or other proceedings so that the justness and reasonableness of the Transco proposal can be examined in detail.

A. THE TRANSCO PROPOSAL FAILS TO MEET THE ELEVEN PRINCIPLES ESTABLISHED IN ORDER NO. 888 FOR CREATION OF AN ISO

13. Entergy requests a finding that the Transco proposal is consistent with the eleven ISO principles in Order No. 888, especially on the issues of "independence, governance and conflicts of interest." Petition at 2. Cajun requests that the Commission carefully consider the eleven ISO principles presented in Order No. 888 in evaluating Entergy's Transco proposal.

14. A preliminary difficulty is that Entergy has reserved the right to file what may be crucial components of the proposal in a Section 203 filing on transfer of assets and in a Section 205 filing of a Transco transmission

tariff. The problem is that without these "details" the Petitioner's description of the proposal is so vague that meaningful evaluation may not be possible. Indeed, there may be grounds for the Commission to reject Entergy's Petition as insufficient to be able render a declaratory order. Without these "details," Entergy's Transco proposal fails to meet the Order No. 888 principles for an ISO.

15. Under the Order No. 888, the following Principles should be applied to the Transco proposal:

1. Governance should be structured in a fair and non-discriminatory manner.

16. The bedrock principle of independence is founded on the separation of transmission from generation. Entergy proposes that its Transco would own -- or lease on terms similar to ownership -- all the transmission facilities currently included in Entergy's open access transmission tariff, as well as the transmission facilities of any other transmission-owning entities that join the Transco. Cajun supports this concept as a general matter, and believes that it is a step in the right direction.

17. Cajun does have a concern about which entities are permitted to become Members of the Transco. Entergy states that its goal is to convince "other transmission-owning entities to become members of the Transco." Petition at 16. Cajun's concern is that the definition of entities eligible to become Members will not

be limited to those which currently own a transmission "system." Cajun owns substantial transmission assets which function as a part of the regional grid. As such, Cajun should be eligible to become a Member of the Transco. The details of how entities become eligible to be Members are essential, yet are not contained in the Petition.

18. It is important that the Members have no control over the day-to-day or long-term operation of the Transco, and that they have limited ability to affect the actions of the Transco. Petition at 23, Appendix B at 14-15. These concepts or provisions appear satisfactory as far as they extend. Any Commission approval must be conditioned on this feature being implemented.

19. Entergy states that the Transco "could technically be" an affiliate of Entergy. Petition at 23. Cajun is concerned about this affiliate relationship, and requests that the Commission condition any approval of Entergy's proposal on the Transco being an independent company unaffiliated with Entergy. The Board of Directors will, of course, continue to have a fiduciary duty to the Members.

20. Turning to governance issues, Entergy proposes an "independent" Board of Directors. Petition at 21. Cajun has no opposition to a truly independent Board, as compared to a stakeholder model used in other regions.

21. Cajun does have concerns about the selection process outlined by Entergy. Petition at 22, Exhibit 3 to Appendix 2. A Selection Committee composed of a fair representation of Market Participants, not just Member Companies, should control the search process, including the selection of a nationally-recognized search firm. Entergy states that it will not oppose such a process (Petition at 22, n.21), and the Commission should condition any approval of the Transco proposal on this feature.

22. Cajun is also concerned that a seven member Board of Directors may be too small to adequately represent a cross-section of interested parties. A board size in the range of 10 to 15 members may allow more effective representation. While the Board members must have no financial ties to Market Participants, they should have relevant and varied experiences to direct the activities of the Transco. In particular, Cajun requests that at least one Board member have experience or background with a transmission dependent utility.

23. Cajun also believes that limiting the search firm to nominating two persons for each board position may be unduly limiting. See Appendix 2, Exhibit B. The Market Participant Selection Committee should be allowed to establish reasonable guidelines on this and other issues.

24. It is important that the Board members have no financial ties to any Market Participant, not just the

Member Companies. Petition at 22. The Commission should make this a requirement.

25. Importantly, Entergy's Transco proposal has limited details on the structure and organization of the Transco itself. There is no provision for a management committee or business issues committee which would provide valuable input from Market Participants. One draws the impression from Section 5.10 of the LLC Agreement that the proposed Transco is a paper entity. Appendix 2 at 12-14. Cajun objects to a Transco which operates the facilities in name only, and relies on the Member Companies (preeminently Entergy) as an agent.

26. The Transco proposal contains little information on how the Transco will be staffed, or what its budget will be. In the absence of such information, the governance proposal cannot be found to be just and reasonable.

2. The Transco and its employees should have no financial interest in the economic performance of any power market participant. The Transco should adopt and enforce strict conflict of interest standards

27. Entergy adequately states the principle that the Transco Board and employees will have no financial ties to the performance of any Market Participant. Petition at 25. Entergy's Code of Conduct is an essential element. Entergy should be required to provide details on how it will "enforce" the Code of Conduct.

28. The Transco presumably is intended to be created by employing, to a large degree, existing Entergy personnel. Thus, it is essential that information and assurances be provided that existing benefits held by transferred employees would not influence the performance of these employees while operating under the Transco.

3. The Transco should provide open access to the transmission system and all services under its control at non-pancaked rates pursuant to a single, unbundled, grid-wide tariff that applies to all eligible users in a non-discriminatory manner.

29. Cajun has great concerns about the transmission tariff which will be used by the Transco. Here, however, Entergy provides no details, and requests that the Commission address the tariff separately.

30. Entergy states that, putting forward a tariff proposal now may deter other transmission-owning entities from supporting the Transco proposal. The same is also true of major transmission customers of Entergy, including Cajun. Cajun cannot fully support the Transco proposal unless and until the Transco transmission tariff is proposed. Input from all or most Market Participants will be essential in fashioning and implementing a Transco transmission tariff.

31. The Transco proposal is silent on a definition of the Transmission System to be operated by the Transco. Details are not provided to determine if the Transco will provide transmission service over all of the

facilities necessary to serve all existing wholesale transmission customers, including Cajun and its members. Local distribution service may need to be provided by the Member Companies.

32. Entergy does request that the Commission approve a "no cost shifting" principle. This is an easy principle to agree with, but cost shifting will be an important and difficult issue to implement, both in terms of integrating new companies and in standardizing the classification of transmission system facilities among Members of the Transco. Cajun will be at risk of substantial cost shifting.

4. The Transco should have the primary responsibility in ensuring short-term reliability of grid operations. This responsibility should be well-defined and comply with applicable standards set by FERC and the regional reliability council.

33. Entergy today operates as one control area, with "satellite" control areas for the individual Entergy Operating Companies. Entergy provides no details about how the Transco will, in fact, operate the grid to ensure reliability. Entergy provides no details about how the Transco could interact with other Market Participants, including Cajun, which operate their own control areas.

34. Nor does Entergy provide any detail on how the Transco can operate the system without control over at least some generation.

35. Finally, the Transco should become a member of the appropriate reliability organization.

5. The Transco should have control over the operation of interconnected transmission facilities within its region.

36. Again, Entergy's Transco proposal is insufficient in meeting this standard, because it does not provide details. It only provides assurances that it controls all intertie transmission facilities.

6. The Transco 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. These rules should promote efficient trading.

37. Cajun supports the concept that the Transco has operational control over the transmission grid, but does not also operate an energy market. However, the congestion management plan must be developed by all Market Participants. The Transco proposal does not make it clear that constraint management, including redispatch costs, must be done only for reliability reasons, not economic reasons.

38. Moreover, it is unclear how the Transco would relieve long-term constraints on the system, other than through coordinated planning among Members. The Transco should have the authority to see that needed facilities are built. The Commission must condition any approval of the Transco proposal on inclusion of these features.

7. The Transco should have appropriate incentives for efficient management and administration and should procure the services needed for management and administration in an open competitive market.

39. Entergy should be required to provide guidelines for how and when the Transco will conduct competitive bidding for major services.

8. The Transco's transmission and ancillary services pricing policies should promote the efficient use of an investment in generation, transmission, and consumption.

40. Cajun has comments on Entergy's outline of a pricing proposal in a separate section.

9. A Transco should make transmission system information publicly available on a timely basis via an electronic information network consistent with the Commission's requirements.

41. The Transco would establish and implement an Open Access Same-Time Information System and Standards of Conduct ("OASIS"). The free flow of information among a Transco and market participants is essential for a Transco to perform its functions and for market participants to efficiently participate in the market. Order No. 888, III FERC ¶ 31,036, at 31,732. The implementation of an Open Access Same-Time Information System (OASIS) must be consistent with the regulations set forth in 18 C.F.R. § 37 (1996).

10. A Transco should develop mechanisms to coordinate with neighboring control areas.

42. Because, as was noted, Cajun currently operates its own control area, this is a crucial issue for Cajun. Entergy must be required to provide more details.

11. A Transco should establish an ADR process to reduce disputes in the first instance.

43. At present, Cajun raises no substantive objections to the Alternative Dispute Resolution ("ADR") procedures set forth in the ISO Proposal.

B. PERFORMANCE BASED RATE-MAKING (PBR) HAS NOT BEEN SHOWN TO BE JUST AND REASONABLE

44. Entergy provides no details about its PBR proposal at this time. Cajun is, as initial matter, opposed to PBR unless and until it can be fully demonstrated to be just and reasonable. The Commission has made it clear that transmission providers must file rates "justified solely on the basis of transmission-related costs." Order No. 888, III FERC Stats. & Regs. ¶ 31,036 at 31,727-0728. Cajun believes it is crucial, in a more competitive industry, that strict functionalization be observed and that transmission rates be based solely on transmission costs.

45. Cajun would likely support Transco transmission rates that are uniform (non-pancaked) and based on the embedded costs of the transmission facilities and transmission related expenses.

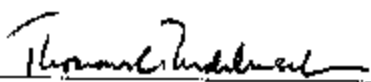
V. CONCLUSION

WHEREFORE, for the foregoing reasons, Ralph R. Mabey, Chapter 11 Trustee for Cajun Electric Power Cooperative, Inc., respectfully requests that the Commission grant the following relief:

1. Grant Cajun's Motion to Intervene and order that Cajun be allowed to participate fully as a party to these proceedings;
2. Consider Cajun's Protest in ruling on Entergy's Transco proposal and either deny the Petition as overly vague or require Entergy to provide further details on its proposal; and
3. Grant such other relief as the Commission may deem necessary and appropriate.

Dated: May 5, 1999

Respectfully submitted,

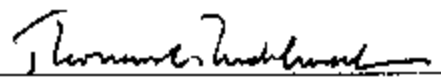


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Attorneys for Ralph R. Mabey,
Chapter 11 Trustee for Cajun
Electric Power Cooperative,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by U.S. Mail. Dated at Washington, D.C., this 5th of May 1999.


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