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COMMISSION

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

Entergy Services, Inc.

) Docket No. E199-57-000

**PROTEST ON BEHALF OF THE CLARKSDALE PUBLIC
UTILITIES COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR §385.211 (1998), and the Commission's April 7, 1999 Notice of Filing, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi ("Clarksdale") hereby protests the April 5, 1999 filing by Entergy Services, Inc. ("ESI") of a Petition for Declaratory Order Regarding Compliance of Transco Proposal With Applicable ISO Principles ("Petition"). Clarksdale previously filed, on April 20, 1999, its Motion to Intervene in this proceeding, in which Clarksdale identified the persons to whom communications should be sent and its interests in this proceeding. As described more fully below, Clarksdale protests the ESI Petition on the grounds that the Transco framework proposed by ESI will not result in a transmission operator with adequate independence from its ESI affiliates with interests in generation and distribution service.

PROTEST

ESI's Petition seeks a preliminary blessing by the Commission on ESI's proposed framework for a Transco that would be a for-profit affiliate of ESI. The Petition asks the Commission to declare that ESI's Transco proposal satisfies all relevant ISO principles,

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“especially those involving independence, governance, and conflicts of interest.” Petition at page 2 Clarksdale submits that ESI’s Transco proposal on its face is inconsistent with the Commission’s ISO principles, particularly those dealing with independence and governance.

As an initial matter, the Commission should make clear in any order commenting on the Petition that any determinations, even in the nature of guidance, are strictly preliminary and subject to reevaluation when the Commission has before it a proposal that is complete, including the details of the proposed corporate arrangements, the proposed mechanism for congestion management, and fully developed proposals for a transmission tariff and operating protocols. Clarksdale respectfully urges the Commission to state explicitly that any and all comments by the Commission in response to the Petition are for purposes of guidance only and will not foreclose thorough review and evaluation of any Transco proposal that is filed subsequently.

The framework described in the ESI Petition is not likely to result in the development of a Transco with adequate independence. The ESI Transco proposal would provide for governance by a seven-member, supposedly independent board. ESI proposes, however, that the transmission owners that are “Member Companies” in the Transco select the board members. Petition at page 15. Although the board members would be prohibited from holding financial interests in the Member Companies, it is difficult to see how board members selected by the Member Companies could be expected to be entirely indifferent to the interests of the entities that appointed them to the board.

Furthermore, ESI proposes that the Transco initially would be staffed entirely by “the employees of the Member Companies that are currently engaged in the operation,

maintenance, restoration and construction of the covered transmission facilities” that are transferred to the Transco. Petition at page 14. Although the employees of the Transco would be required to sever their financial ties with their former employers, it is unrealistic to expect that they would be able to eliminate all emotional ties. In light of the historical corporate loyalties and continuing personal relationships, it is unlikely that a newly formed Transco staffed entirely by former employees of the Member Companies could truly avoid any consideration of the continuing interests of the Member Companies. The Commission made clear in its recent order concerning the New York Power Pool ISO that it is not sufficient merely for a transmission operator’s governing board to be independent. The Commission also requires that those responsible for day-to-day management and operations be independent. *Central Hudson Gas & Electric Corporation, et al.*, 87 FERC ¶61,135 (1999)

ESI’s Transco proposal appears to allow the initial Member Companies to block the admission of additional Members. Under §3.3(b) of the proposed Limited Liability Company Agreement (“Transco Agreement”), the initial Member Companies apparently have a right of first refusal to acquire additional Issued Interests. Through this apparent right of first refusal, the initial Member Companies may be able to control permanently the capitalization of the Transco, contrary to the principle of independence. In addition, it is clear that a Transco’s ability to serve regional transmission needs will be affected by its size and scope. If the Transco is limited in size, it will not be able to effectively address pancaking issues. For both of these reasons, Clarksdale opposes the provision allowing the initial Member Companies effective control over the addition of new members.

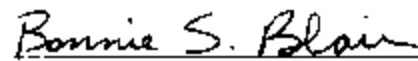
Clarksdale also is concerned by ambiguities in the proposed Transco's responsibilities for transmission expansion. Logically, a Transco should be responsible for planning, constructing, and owning expansions of the transmission grid for which it is responsible. The role of the ESI proposed Transco, however, is unclear. Although the Petition states at various points (*e.g.*, at pages 21, 34, and 39) that the Transco will have an active role in transmission planning, §5.11(b)(ii) of the proposed Transco Agreement provides that consent of the Transco Members (*i.e.*, the current transmission owners) is required before the Transco can acquire assets "other than in the ordinary course of the Company's business." It is not clear whether transmission assets associated with transmission expansion projects would be considered acquired in the ordinary course of the Transco's business.

The foregoing discussion of Clarksdale's concerns is necessarily incomplete, because the Petition sets forth only the broad outlines of ESI's Transco proposal. Additional issues are likely to surface when full details of the proposal become available. Based on the framework filed by ESI, however, the proposal does not satisfy the Commission's most fundamental requirement for independence.

CONCLUSION

Wherefore, for the foregoing reasons, Clarksdale respectfully urges the Commission to deny ESI's Petition unless and until the Transco proposal is modified to provide for a transmission operating entity that is truly independent, both in its governance structure and in the management of day-to-day operations, from entities with interests in generation or distribution service.

Respectfully submitted,



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May 5, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have on this 5th day of May, 1999, caused a copy of the foregoing document to be sent by first-class mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.

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