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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Energy Services, Inc.)

Docket No. EL99-57-000

MOTION TO INTERVENE AND COMMENTS
OF ELECTRIC CLEARINGHOUSE, INC.

This Motion to Intervene and Comments is filed by Electric Clearinghouse, Inc. (ECI) pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.214 and .211 (1998), and the Notice issued on April 7, 1999. ECI requests that this Motion be granted for the reasons set forth below:

I.

Communications and correspondence concerning this Motion should be directed to the following:

Daniel A. King, Esq.
Director & Regulatory Counsel
ELECTRIC CLEARINGHOUSE, INC.
805 15th Street, N.W.
Suite 510-A
Washington, D.C. 20005-2207
(202) 842-9180
email: daki@dynegy.com

Kathryn L. Patton, Esq.
Senior Director & Regulatory Counsel
ELECTRIC CLEARINGHOUSE, INC.
1000 Louisiana
Suite 5800
Houston, TX 77002-5050
(713) 507-3761
email: klpa@dynegy.com

II.

ECI is headquartered in Houston, Texas and is a subsidiary of Dynegy Inc.,¹ which has subsidiaries involved in the gathering, processing and marketing of natural gas, natural gas liquids and crude oil, as well as the generation and marketing of electric power. ECI received

¹ On July 6, 1998, NGC Corporation changed its name to Dynegy Inc. ECI will soon change its name to reflect the Dynegy name, and will be making the appropriate FERC filings relating to the change in the near future.

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authorization from the Commission on April 7, 1994 to sell electricity at market-based rates. ECI is a marketer of electric power and provides value-added services for utility and non-utility generators. ECI also offers various risk management services to its customers, including options, swaps and other financial derivatives.

III.

On April 5, 1999, Entergy Services, Inc. (Entergy) tendered for filing a Petition for Declaratory Order Regarding Compliance of Transco Proposal with Applicable ISO Principles (Petition). Entergy's petition asks the Commission to issue an order declaring that the plan to create a "Transco," an independent, regional transmission company that will operate the transmission system of Entergy and other transmission-owning companies (Entergy Transco), is consistent with the relevant independent system operator (ISO) principles established by the Commission in Order No. 888,² especially those involving independent, governance, and conflicts of interest. Entergy requests that the Commission issue the requested declaratory relief before the end of July 1999. Entergy's stated goal is to file a transco proposal that covers a larger region than Entergy's current transmission grid. Entergy states that, once the Commission issues the requested declaratory order, Entergy will file a detailed transco proposal within 18 months.

² Order No. 888, Promoting Wholesale Competition Through Open Access Non Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 Fed. Reg. 21,540 (May 10, 1996), 1991-1996 FERC STATS. & REGS. PREAMBLES ¶ 31,036 at 31,730-32 (Apr. 24, 1996), *order on reh'g*, 62 Fed. Reg. 12,274 (March 14, 1997), 78 FERC ¶ 61,220 (March 4, 1997), *order on reh'g*, 62 Fed. Reg. 64,688 (December 9, 1997), 81 FERC ¶ 61,248 (November 25, 1997), *order on reh'g*, 82 FERC ¶ 61,046 (January 20, 1998).

IV. COMMENTS

While ECI applauds the forward-looking efforts of Entergy in its initial steps toward creating a wholly-independent wires company, or "transco," there are aspects to the Entergy proposal that could be improved upon. Inasmuch as Entergy's proposal represents one of the first such transco filings at the Commission, it is important for the broad policy issues relating to such proposals to be explored early in the process of developing these entities. To that end, in the comments below, ECI describes a number of structural changes to the Entergy proposal that would ensure that the Entergy Transco and any related regional transmission organization (RTO) operate in a manner that ensures regional reliability and non-discriminatory access while promoting competition among all users of the grid.

- **Structure and Management**

The Entergy Transco would be a Delaware limited liability company (LLC) to which the Entergy operating companies (and any other member transmission owners) would transfer ownership or lease their transmission assets. Entergy has attached its proposed LLC agreement (Agreement) as part of its Petition. The Entergy Transco would be responsible for all aspects of operating the regional transmission grid. Petition at pp. 9-10.

The former transmission owners will have no rights to manage the day-to-day or long-term operations of the Entergy Transco. However, in return for their contribution of transmission facilities, Entergy Transco members would receive "passive ownership interests" in the LLC in proportion to the book value of the transmission assets contributed. Therefore, as Entergy concedes, the Entergy Transco would "technically" be an affiliate of the former transmission owners. Petition at pp. 10, 16, 23. The passive ownership interests (i) allow the Entergy

Transco's profits and losses to be allocated proportionately among Entergy Transco members; and (ii) allow the members to vote on the limited set of actions that can be taken by members rather than the Board.³ Agreement, Sections 4.1 and 5.11.

Structural Issues

Although the wires transfer to the Entergy Transco is a step in the right direction, Entergy's proposed structure does not go far enough in terms of creating a truly independent transco, because Entergy would retain the above-described passive ownership of the Entergy Transco and would thus remain, to a certain extent, in the "wires business."

- Interrelationship with RTOs

The Commission should view transco proposals as the first step in a process leading to larger RTOs. As noted above, the broad policy issues relating to initial transco proposals such as the instant Petition should be addressed and explored early in the Commission's process of analyzing these proposals. In addressing market structure on a broader scale, the Commission should require a two-level structure whereby multiple, for-profit transcos, such as the Entergy Transco, are overlaid by independent, non-profit RTOs. The RTOs would include both public and private power, and would serve to determine system capability, take part in transmission planning and manage reliability. The independence of the RTOs will ensure that objective, region-wide calculations of available transmission capability, total transfer capability, transmission reliability margin, etc., are made by a party that is disinterested in the power

³ The list of actions that require member approval is set forth in the Agreement, and includes merger, dissolution, sale of all or most of the Entergy Transco's assets or commencement of bankruptcy proceedings. Agreement, Section 5.11(b).

market.⁴ This should eliminate ongoing problems resulting from different calculations on different sides of internal interfaces. Indeed, overlaying even the Entergy Transco with an RTO would perhaps establish enough independence to allow Entergy to retain its passive ownership interests, although issues such as interconnection requests at the transco level may still remain.

- Geographic Scope

In terms of geographic scope, RTO boundaries should be at natural breaks that maximize the ability to internalize loop flows and congestion, *i.e.*, based on physics, and not politics. Reliability is more appropriately addressed on a broad, region-wide basis where the information is more accurate and the flexibility to redispatch can be maximized.⁵

Under RTO oversight, for-profit, unaffiliated transcos, in competition with each other, should be allowed to sell transmission determined to be available by the RTO. Transcos could consist of multiple transmission systems, as Entergy apparently contemplates.

- Transco Independence

The main feature of these entities is that transcos must be independent – not under common control with generation or marketing. In this regard, it is unclear why Entergy proposes to retain passive ownership of the transco facilities, rather than fully divesting. Entergy should be financially indifferent to either option. Under divestiture, Entergy would receive the net

⁴ RTO management structure should include a fair governance structure that is put in place *before* regional rules are developed. This could be accomplished via a "hybrid" board structure, *i.e.*, 1/3 unaffiliated members and 2/3 stakeholder. In this manner, independence is balanced by industry perspective and self-interest. Furthermore, by implementing segment representation (for example: Transmission Owners, Transmission Dependent Utilities, Marketers, End-users, Independent Power Producers), RTOs could ensure that all stakeholders have a voice in RTO governance.

⁵ For each RTO, there should be one North American Electric Reliability Council (NERC)

present value of its assets, which should have the same value to Entergy as if the assets were retained. ECI is concerned that any perceived benefit that Entergy expects to receive by retaining its affiliation with the Entergy Transco will come at the expense of other market participants in terms of their ability to access non-discriminatory transmission service on the grid.

Incentives and Accountability

Moreover, RTOs and transcos should each have incentives to manage the grid efficiently. Performance-based rates would provide accountability for transcos. RTOs could be held accountable via employee incentives, *e.g.*, based on throughput comparisons – pre-RTO to RTO environment, meeting reliability goals, and eliminating congestion in a cost effective manner.

Entergy describes proposed rate incentives for the Entergy Transco (i) to maximize throughput; (ii) to relieve congestion; and (iii) to enhance reliability. Petition at p. 33. To the extent that Entergy fully divests its transmission facilities, Entergy's proposed incentive rate structure for the Entergy Transco deserves serious consideration by the Commission; however, the Entergy Transco should not receive the benefit of performance-based rates if it remains affiliated with Entergy.

Market Monitoring

A market monitoring unit staffed by Entergy Transco employees would be formed for the purpose of monitoring compliance with Entergy Transco standards, investigating complaints, identifying design flaws, and collecting information for reports to the Board and relevant agencies. Petition at pp. 13-14.

(or successor organization) Security Coordinator that manages the security of the region.

ECI's experience with the ISOs implemented to date is that the ISO staff – despite their purported independence – still tends to favor the incumbent utilities. For this reason, ECI is concerned that employee transfers, residual relationships and "good old boy" loyalty will perpetuate a utility's ability to receive preferential service from a purportedly "independent" entity, such as a transco or ISO. Thus, in order to ensure that all aspects of the market are being examined, the Commission should require that, in addition to other market participants, the market monitoring function is inwardly directed to monitor the actions of the transco and its employees. While the Market Monitoring Plan submitted by Entergy appears to contemplate such a role (e.g., Appendix 3, Part I), Entergy should be required to clarify that the Market Monitoring Unit would be responsible for monitoring Entergy Transco activities as well.

Moreover, to the extent that a transco is a for-profit entity, the Market Monitoring Unit's access to information from market participants should be limited to transmission-related data only. As a for-profit entity, a transco should not be granted the same level of authority with respect to data-gathering as a not-for-profit ISO. For instance, it would be inappropriate for the transco's Market Monitoring Unit to obtain information regarding generation prices or similar market-specific data from individual market participants.

- **Transmission Service**

Entergy states that it contemplates transferring to the Entergy Transco those networked assets currently included in Entergy's open access transmission tariff (OATT). Transfers will be accomplished through a fee simple transfer, a contribution, or a long-term lease (which would be structured to prevent former transmission owners from exercising any authority or control over the Entergy Transco). Petition at pp. 14-15.

Transco Tariff Issues

Entergy states that it has not yet formulated an OATT proposal, but indicates that it will develop and file its tariff via a joint effort with other transco members and stakeholders providing for service under the Entergy Transco OATT. Petition at p. 26. Again, while this proposal represents a positive move, true comparability will be achieved only when all users of the grid are put on the same tariff, such as an RTO-wide Capacity Reservation Tariff (CRT), which would equalize network transmission service and point-to-point transmission service. Under such a construct, all transcos' revenue requirements would be combined into an RTO-wide cost-of-service rate. Firm service rights would be sold from receipt area to delivery area, much as described in the Commission's CRT Notice of Proposed Rulemaking.⁶

- Congestion Management

Any impacts from loop flow should be determined by the RTO as Security Coordinator. Based on the RTO's determinations, the rights to sell area-to-area transmission would be allocated among the transcos, with each transco having the right to sell up to its maximum percentage of overall capabilities. In order to maximize use of the grid, the RTO would also be permitted to sell transmission services, to the extent such service is not sold in the first instance by the transco. Because congestion costs are often a very small percentage of overall transmission costs, redispatch costs should be internalized in rates (thereby providing rate certainty), and congestion would be managed within RTO boundaries.

⁶ *Capacity Reservation Open-Access Transmission Tariffs*, Notice of Proposed Rulemaking, 61 Fed. Reg. 21,847 (May 10, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,519 (April 24, 1996).

With respect to congestion management, Entergy states that an appropriate congestion management proposal has not yet been developed, and that the LLC members and other stakeholders will formulate an appropriate congestion management scheme to be filed in the future. Petition at p. 31. From a procedural standpoint, it is unclear from Entergy's statement whether its congestion management proposal would be prepared under the auspices of the Entergy Transco or would instead be formulated by the Transco "Member Companies," who may not necessarily be as receptive to concerns expressed by other stakeholders.

- Transmission Expansion

The Entergy Transco will hold an annual Regional Planning Summit Process during which all market participants would participate in a detailed review of the region's resource needs, including proposed transmission expansion plans. This process would theoretically identify options that could improve reliability, relieve congestion and increase regional transactions. Petition at p. 31.

Entergy is currently analyzing a request for interconnection to the Entergy system for a proposed Dynegy generation facility near Lake Charles, Louisiana. ECI fully expects that the Dynegy request for interconnection will be promptly handled in a non-discriminatory manner. Entergy's treatment of this and similar requests from unaffiliated utilities, however, will provide valuable insight into how independent the proposed Entergy Transco would actually be. While the instant Petition does not address in any detail how requests for new generation interconnects will be handled by the Entergy Transco once the transfer of assets is completed, any such procedures must be filed with the Commission as part of the applicable OATT and must ensure

that the Entergy Transco will treat market participants in a fair and non-discriminatory manner with respect to requests for such interconnections.

V.

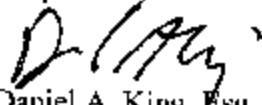
As a potential recipient or beneficiary of transmission service from Entergy, ECI will be directly affected by the outcome of this proceeding. ECI's interest cannot be adequately represented or protected by any other participant. Under the circumstances, good cause thus exists to permit ECI to intervene.

VI.

WHEREFORE, for the reasons set forth above, ECI respectfully requests that: i) it be permitted to intervene in the above-captioned proceeding and be made a party for all purposes; and ii) the Commission condition and/or modify Entergy's proposal in the manner described above.

Kathryn L. Patton, Esq.
ELECTRIC CLEARINGHOUSE, INC.
1000 Louisiana
Suite 5800
Houston, TX 77002-5050
(713) 507-3761

Respectfully submitted,


Daniel A. King, Esq.
ELECTRIC CLEARINGHOUSE, INC.
805 15th Street, N.W
Suite 510-A
Washington, D.C. 20005-2207
(202) 842-9180

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.

Dated at Washington, D.C.: May 5, 1999

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