

**ORIGINAL**

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

67-101-38 100 2200  
05 MAY -5 1999  
FEDERAL ENERGY  
REGULATORY  
COMMISSION

Energy Services, Inc.

)

Docket No. EL99-57-000

**MOTION TO INTERVENE AND PROTEST  
OF THE**

**ELECTRIC POWER ASSOCIATIONS OF MISSISSIPPI, INC. (A.A.L.), ET AL.**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's (Commission or FERC) Rules of Practice and Procedure, 18 C.F.R. Sections 385.211 and 385.214, and the April 7, 1999 "Notice of Filing" in the above-noted docket, the Electric Power Associations of Mississippi, Inc. (A.A.L.), *et al.*, hereby move to intervene in this docket and to protest the filing made herein. In support of their Motion and Protest, they state as follows:

I.

**MOTION TO INTERVENE**

The Electric Power Associations of Mississippi, Inc. (A.A.L.) ("MS Statewide") is an agricultural association organized under Mississippi's Agricultural Association Law, Sections 70-71-1, *et seq.*, Miss. Code Ann. (1972). Its membership is comprised of rural electric cooperatives organized under Mississippi's Electric Power Association Law, Sections 77-5-201, *et seq.*, Miss. Code Ann. (1972). The MS Statewide is intervening in this docket on its own behalf and on behalf of the following cooperative members: Alcorn County Electric Power Association, Central Electric Power Association, East Mississippi Electric Power Association, 4-County Electric Power Association, Monroe County Electric Power Association, Natchez Trace Electric Power

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Association, Northcentral Mississippi Electric Power Association, North East Mississippi Electric Power Association, Pontotoc Electric Power Association, Prentiss County Electric Power Association, Tallahatchie Valley Electric Power Association, Tippah Electric Power Association, Tishomingo County Electric Power Association, and Tombigbee Electric Power Association. These members of the MS Statewide are customers of the Tennessee Valley Authority (TVA).

Eleven other cooperative members of the MS Statewide purchase power from South Mississippi Electric Power Association (SMEPA), a generation and transmission (G&T) cooperative serving Southern Mississippi. MS Statewide understands that SMEPA will be filing a separate motion to intervene on behalf of itself and its member cooperatives, due to the unique issues raised by this docket for SMEPA and its members. MS Statewide and those members listed above by this motion are seeking to intervene in this docket both jointly as a group, and in their individual capacities.

The names, addresses, and telephone numbers of persons upon whom service of pleadings, documents or communications should be made are:

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On April 5, 1999, Entergy Services, Inc. (Entergy) filed in the instant docket its "Petition for Declaratory Order Regarding Compliance of Transco Proposal with Applicable ISO Principles" (Petition). Entergy seeks a Commission ruling that its proposal to create an affiliated for-profit transmission company (Transco) meets the standards developed for Independent System Operators (ISOs) in Order No. 888. Entergy requests a Commission ruling on its Petition by the end of July 1999.

One of Entergy's operating companies, Entergy Mississippi, Inc.(EMI), provides both wholesale transmission and retail electric services in the State of Mississippi. The Public Service Commission of the State of Mississippi (MPSC) currently has a generic docket (Docket No. 96-UA-389) ongoing in which it is considering the possible establishment of retail competition in Mississippi. The MS Statewide and its members are active participants in that docket. In a subdocket in that proceeding, the MPSC is investigating EMI's proposal to create a Transco. The MS Statewide and its members filed comments on the EMI Transco proposal on August 31, 1998.

The Commission's action on Entergy's Petition in this docket could have an important precedential effect on the actions of the MPSC in its state restructuring docket, and in particular, the subdocket in which it is investigating EMI's Transco proposal. For this reason, the MS Statewide and its above-named members, as active participants in the MPSC docket, have a direct interest in the outcome of this docket, an interest that cannot be effectively represented by any other party. This interest justifies the granting of the MS Statewide's and its named members' joint and several motion to intervene.

## II.

## PROTEST

The MS Statewide does not support Entergy's Petition, and requests the Commission to deny it. The MS Statewide takes this position for several reasons.

Entergy's Transco Proposal Is Too Indefinite To Assess Its Compliance With The Commission's ISO Standards.

Entergy's Transco proposal is ill-defined in a number of important respects.

Among other things:

- The LLC Agreement attached to the Petition as Appendix 2 forms the underpinning for Entergy's proposal (and its claims that the Transco will be independent of its transmission-owning interest holders). Yet footnote one to that Agreement states that "[t]his draft Limited Liability Company Agreement is being provided at this time for informational purposes only. This draft is what Entergy intends to use as a starting point for negotiations with other potential members. The draft LLC Agreement is subject to change...." This makes the Entergy Transco proposal a "moving target," and hence unsuitable for the issuance of a declaratory order.
- Entergy mentions that it has had discussions with other transmission owners, but makes no mention of their identities. This makes it impossible for the Commission or other interested parties to assess whether the Transco would serve a rationally configured region. If the Entergy Transco serves only the service areas of the Entergy Operating Companies, it would bisect the State of Mississippi. The MS Statewide would oppose such a result, as it believes a rationally configured Southeastern RTO should serve as large a geographic region as possible.
- Entergy states that it "expects the Transco to control and operate more than the transmission facilities of the Operating Companies." Petition at 13. Entergy contemplates that other transmission-owning entities "who transfer their transmission assets through transfer of ownership, lease, or other means, will in return, receive a passive ownership interest in the Transco." *Id.* It is not clear to the MS Statewide whether entities such as TVA can participate in such a scheme without violating their statutory and/or other legal obligations. Given the important role of TVA as a transmission provider in the Southeast, any Transco proposal that purports to be truly regional (as opposed to Entergy-only), must address the ability of TVA to participate.

Given the vague and indefinite nature of the Entergy Transco proposal, MS Statewide believes that the Commission should not issue the declaratory order Entergy seeks. Rather, it should instruct Entergy to file a definitive proposal prior to expending its scarce resources to review the proposal and issue any declaratory order.

The Entergy Transco Would Not be Independent.

The MS Statewide in its comments in the MPSC restructuring docket argued that implementation of retail competition in Mississippi should be conditioned on the implementation of a regional transmission access arrangement that is demonstrably independent of any influence by transmission owners. This is necessary to prevent discrimination in the granting of transmission access in a competitive bulk power environment. The MS Statewide desires a full and open debate on the merits of a fully-developed Transco proposal as compared to other regional transmission structures, such as an ISO. Nonetheless, the MS Statewide is asking the Commission to deny Entergy's Petition. Entergy's proposed Transco would not be independent. It would not be a sound starting point for the development of a Southeastern RTO. Rather, it would continue, if not institutionalize, Entergy's domination over both transmission and generation in the region.

Entergy acknowledges in its Petition (at 6) that "in its initial discussions with other transmission-owning entities who may be interested in joining the Transco, and with state regulatory commissions, the "independence" issue has been consistently raised as an important threshold issue regarding the formation of a proposed Transco." The reason why the independence issue keeps turning up for Entergy, much like a bad penny, is clear from an examination of Entergy's proposal. It wishes to form a limited liability

company (LLC) that would be owned by those “Member Companies” transferring transmission assets to the LLC. At this time, however, the only such entities appear to be the Entergy Operating Companies. They would take back supposedly “passive ownership interests” in the LLC, but would have the right to veto certain important management decisions. See, e.g., LLC Agreement, Section 5.10(a) and Section 5.11(b). The Transco would be managed by an independent Managing Board, but Entergy wants the Member Companies to select the initial Board Members from a slate of candidates developed by a search firm that the Member Companies would also choose. Petition at 9. Moreover, the Member Companies would have the right to remove a Director “for cause,” subject to FERC approval. LLC Agreement, Section 5.8(a).

If the Member Companies have the rights to both select the initial LLC Managing Board members and to remove them, it is hard to believe that the Board members will ignore the interests or opinions of the Member Companies as they manage the LLC. Entergy’s plan fails to address the fundamental question of how independence can be achieved in the face of the fiduciary obligations (and practical business responsibilities) the Transco Board would owe to the Transco’s owners, *i.e.*, the Entergy Operating Companies. The Board of the Transco, which must be answerable to somebody, would surely have some appreciation for the fact that the Entergy Operating Companies own the enterprise. This issue goes to the heart of whether a Transco can be owned by the same entities that own and control substantial generation assets in the region in which the Transco operates.

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<sup>1</sup> Entergy states that “if the Commission believes such a process is critical to independence,” it would not oppose having a “structured stakeholder committee” make the initial board member selections. Petition at 9-10. If this approach were used, however, Entergy says that the selection of the representative stakeholder committee would itself be “subject to negotiation among the relevant parties.” *Id.* at n. 11.

Entergy discloses in a footnote that “Entergy’s ownership interest in the Transco will continue to be included on Entergy’s financial disclosure documents and its consolidated tax return.” Application at 27, n. 25. There is no surer sign of continuing affiliation and common financial interest than the inclusion of the Entergy Transco ownership interests in Entergy’s consolidated tax return. The income (or losses) attributable to these ownership interests will be set off against those of Entergy’s other affiliates to determine the overall tax liability of the Entergy family of companies. The Entergy Transco would be an integral part of the Entergy enterprise.

Entergy attaches to its application as Exhibit 1 elaborate “Standards of Conduct” which are supposed to ensure that the “Company” (the Transco) will operate free of the control, or the appearance of control, by a Member Company or other market participant. Entergy acknowledges that Transco employees would have to abide by a Code of Conduct complying with Order No. 889, because “the Transco could technically be an affiliate of the Member Companies.” Application at 22. That such standards of conduct would be necessary only underscores the already obvious--the Transco Entergy proposes is not the truly independent RTO needed to ensure truly non-discriminatory and fully comparable open access transmission in the Southeast.

Finally, Entergy proposes to transfer those employees now engaged in the operation, maintenance, restoration and construction of the covered facilities to the Transco. Petition at 9. If virtually all of the Transco employees are “Entergy transplants,” it will be all the more difficult for the “independent board” to run the Transco free of any influence by other Entergy companies. Human nature being what it

is, the Transco's employees may not be totally unbiased in carrying out their duties, especially during the initial start-up and vital first years of operation.

The Entergy Transco Proposal Also Suffers From Other Defects That Merit Its Rejection.

Entergy's proposed Transco also suffers from numerous other deficiencies that make it an inappropriate RTO model. These deficiencies include the following:

- The proposal appears to be premised on the availability of performance-based rates (PBR), yet Entergy provides no clues as to what type of PBR mechanism it desires. Petition at 15, 29.
- The "Annual Regional Planning Summit Process" laid out in Appendix 4 is no more than a "notice and comment" planning model. It falls far short of the type of true joint planning process needed if new transmission facilities are to be planned to maximize the benefits of the system to the entire region.
- The proposal provides no details as to how congestion management and ancillary services will be handled. Given Entergy's dominant position in the generation markets that would be served by the Entergy Transco, these technical but important areas must be fleshed out.
- Given the affiliate relationship between the Entergy Transco and Entergy, it is doubtful that the market monitoring plan set out in Appendix 3 will achieve its stated goals. The MS Statewide questions whether the Entergy Transco can itself monitor whether it is unduly favoring other Entergy affiliates in its operation of the transmission system, and report to the Commission if it finds it is indeed doing so. An ISO would be a more appropriate entity to undertake such market monitoring functions.

## III.

## CONCLUSION

The MS Statewide, on behalf of itself and the Mississippi cooperatives it represents in this docket, requests the Commission to deny the Entergy Petition.

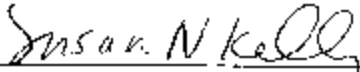
Respectfully Submitted,

ELECTRIC POWER ASSOCIATIONS OF MISSISSIPPI, INC.  
(A.A.L.)

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CENTRAL ELECTRIC POWER ASSOCIATION  
EAST MISSISSIPPI ELECTRIC POWER ASSOCIATION  
4-COUNTY ELECTRIC POWER ASSOCIATION  
MONROE COUNTY POWER ASSOCIATION  
NATCHEZ TRACE ELECTRIC POWER ASSOCIATION  
NORTHCENTRAL MISSISSIPPI ELECTRIC POWER  
ASSOCIATION  
NORTH EAST MISSISSIPPI ELECTRIC POWER  
ASSOCIATION  
PONTOTOC ELECTRIC POWER ASSOCIATION  
PRENTISS COUNTY ELECTRIC POWER ASSOCIATION  
TALLAHATCHIE VALLEY ELECTRIC POWER  
ASSOCIATION  
TIPPAH ELECTRIC POWER ASSOCIATION  
TISHOMINGO COUNTY ELECTRIC POWER  
ASSOCIATION  
TOMBIGBEE ELECTRIC POWER ASSOCIATION

By Their Counsel

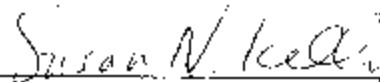
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May 5, 1999

## CERTIFICATE OF SERVICE

I hereby certify that I have this 5<sup>th</sup> day of May, 1999, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, by depositing copies in the United States mail, first-class postage prepaid.



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