

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Entergy Services, Inc.

Docket No. EL99-57-000

DECLARATORY ORDER

(Issued July 30, 1999)

In this order, we will grant the petition for declaratory order filed by Entergy Services, Inc. (Entergy), as discussed below. We conclude that passive ownership of a transmission entity by a generating company or other market participants could meet the ISO principles contained in Order No. 888,¹ if the passive ownership proposal is properly designed, i.e., if the applicant demonstrates that the transmission entity is truly independent of the market participants. We recognize that Entergy's current proposal is subject to change as additional participants join Entergy's effort and as details are added, but there are certain aspects of the proposal that are not fully developed and other aspects that we want the applicants to address. Entergy will need to address adequately the specific concerns discussed herein in any filing it ultimately makes, including the proposed transmission company's board selection and removal procedures, and the board's fiduciary duties, which are discussed below. We emphasize that we are addressing Entergy's proposal only under the ISO principles.

¹See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 62 Fed. Reg. 64,688, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), appeal docketed, Transmission Access Policy Study Group, et al. v. FERC, Nos. 97-1715 et al. (D.C. Cir.).

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Background

On April 5, 1999, Entergy filed a petition for declaratory order requesting preliminary guidance on its proposal to create an affiliated, for-profit transmission company based on the 11 principles established in Order No. 888 for assessing ISO proposals. Entergy explains that it has not finalized many of the details of its proposal, but it is particularly interested in Commission feedback on the issues of independence, governance and conflict of interest (ISO Principle Nos. 1 and 2). Entergy requests a decision no later than July 1999.² After receiving our guidance in the instant application, Entergy hopes to attract other transmission providers to join its proposed transmission entity³ and plans to file requisite applications under Federal Power Act (FPA) sections 203 and 205⁴ to formally establish a transco at a later time.

Entergy's Proposal

The proposed Transco would be a limited liability corporation (LLC) created under Delaware law. The five Entergy operating companies⁵ and any other transmission-owning participants that wish to join (collectively, Member Companies) would convey their assets to the LLC either through a fee simple transfer, a lease, or a contribution to capital. In return, the Member Companies would be allocated a passive interest in the LLC based on the book value of the assets transferred with a right to share in the income it produces. Member Companies would have no control over the Transco's management

²Entergy states that expedited action is warranted because certain states in which Entergy operates have plans to implement retail access during the 2001-2002 time frame, and at least one of those states (Arkansas) is requiring an Entergy operating company to turn operation of its transmission facilities over to an independent transmission entity approved by the Commission. Entergy states that early action would accommodate those contemplated start-up dates.

³For purposes of this order, we will call the proposed company a transco, as Entergy does in its petition. We note, however, that some aspects of Entergy's proposed company resemble institutions we have approved as ISOs in the past.

⁴16 U.S.C. §§ 824b, 824d (1994).

⁵The operating companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., encompassing transmission operations over nearly all of Arkansas and Louisiana and parts of Mississippi and eastern Texas.

or operations other than limited voting rights in certain specific decisions, such as dissolution, merger, or consolidation.

The LLC would be managed and governed by an independent, seven-member board with the expertise necessary to operate an independent transmission entity, and with no financial ties to the Member Companies. The Member Companies would select a nationally-recognized executive search firm that would choose a slate of candidates for the board, consisting of at least two candidates for each position. Entergy proposes that a committee of stakeholders (including representatives from the Member Companies) will select the board members.⁶ Sitting board members would serve staggered, three-year terms; they could only be removed for cause by the board or by a super majority (75 percent) of Member Companies. New board members would be selected by the remaining board members.⁷ Because the LLC would be owned by the Member Companies, Entergy states that the board would have a "nominal fiduciary role" toward the Member Companies.⁸

The employees of the Member Companies that currently operate and maintain the transferred facilities would sever their ties with the Member Companies (within six months) and become employees of the Transco. A proposed code of conduct would require that board members, officers, and employees operate and plan the transmission system without preference to any market participant, and that sensitive market information must be protected or disseminated properly and fairly. Individuals' compensation would be based on the Transco's performance and would not be controlled by the Member Companies or other market participants.

On May 13, 1999, in a separate proceeding, the Commission issued a Notice of Proposed Rulemaking on RTOs.⁹ This NOPR proposes to set minimum characteristics and functions for transmission entities, including ISOs and transcos, to become Commission-approved RTOs. Initial comments on the NOPR are due on August 16 and reply comments are due September 29, 1999. Entergy's petition was filed before issuance of this NOPR, and seeks guidance based on the ISO principles in Order No. 888 but

⁶The petition proposed an alternative mechanism for selecting board members but Entergy withdrew that in its answer.

⁷Entergy initially proposed that Member Companies could select replacement board members under certain circumstances, but removed that provision in its answer.

⁸Petition at 24.

⁹87 FERC ¶ 61,173 (1999) (RTO NOPR).

commits that Entergy "will abide by the outcome of any final and non-appealable rulemaking order that might modify any relevant regional transmission organization related policies or principles." ¹⁰

Notice, Interventions and Responsive Pleadings

Notice of Entergy's filing was published in the Federal Register, 64 Fed. Reg. 18,613 (1999), with comments due on or before May 5, 1999. The Arkansas Public Service Commission (Arkansas Commission), the Louisiana Public Service Commission (Louisiana Commission), and the Mississippi Public Service Commission (Mississippi Commission) filed notices of intervention. Timely, unopposed motions to intervene were filed by the entities listed in the Appendix. The Competitive Transmission Association, Inc. (CTA) filed a timely motion to intervene and comments in support of Entergy's petition. On May 20, 1999, the Arkansas Electric Cooperative Corporation (AECC) filed an opposition to CTA's motion to intervene asserting that CTA has not sufficiently justified its intervention.

On May 6, 1999, Cleco Corporation (Cleco) and Duke Energy North America, LLC (Duke Energy NA) filed motions to intervene one day out-of-time. Also on May 6, 1999, Texas Industrial Energy Consumers (TIEC) filed a motion to intervene and protest in this proceeding.

On May 7, 1999, U.S. Generating Company (USGen) and PG&E Energy Trading-Power, L.P. (PG&E Energy) jointly filed a motion to intervene out-of-time. On May 19, 1999, the Public Utility Commission of Texas filed a motion to intervene out-of-time. On May 27, 1999, the staff of the Bureau of Economics of the Federal Trade Commission (FTC) submitted untimely comments in this proceeding.

Three parties submitted various motions for summary disposition. AECC filed a motion for summary disposition and alternative motions to hold the petition in abeyance or for hearing on the basis that the petition is premature and inconsistent with the ISO principles. Transmission Dependent Utility Systems (TDU Systems) filed a motion for summary denial arguing that the Transco would not be independent as proposed in Entergy's petition. Finally, the Large Public Power Council (LPPC) filed a request to dismiss because the issues raised in the filing are generic and should be taken up in the RTO rulemaking proceeding, because the petition lacks details necessary for a determination of the merits, and because the proposal does not satisfy the principles for independence.

¹⁰Petition at 4, n.5.

On May 20, 1999, Entergy filed an answer to the protests, motions for summary disposition, and motions to hold the petition in abeyance. Entergy reiterates its need for expedited action, citing Arkansas legislation requiring it to transfer control of its transmission facilities to an independent operator by January 1, 2002. In addition, on June 11, 1999, Entergy filed an answer responding to the FTC's late-filed comments.

On June 4, 1999, AECC filed a motion to lodge the Arkansas legislation relied upon in Entergy's answer to support AECC's assertion that there is more flexibility in the implementation schedule and thus less need for urgency than Entergy suggests.

Positions of the Parties

Negative comments generally fall into three categories: those asserting that this is not a matter appropriate for disposition by a declaratory order; those alleging that the proposal does not provide sufficient detail to permit an order on the merits; and those protesting specific aspects of the proposal.

LPPC and the American Public Power Association (APPA) assert that the Commission should not entertain Entergy's petition because the proposal is insufficiently detailed and the generic issues raised in the proposal are properly resolved in a rulemaking proceeding, specifically the RTO rulemaking. LPPC and the South Mississippi Electric Power Association (South Mississippi) argue that the Commission has historically declined to issue declaratory orders on abstract proposals. South Mississippi also terms the proposal "grossly premature" and so "amorphous" that the Commission should find it not ripe for a determination.¹¹ The Arkansas Commission repeats these arguments and also states that the declaratory order procedure is inappropriate here because the proposal does not reflect input from other market participants. The Arkansas Commission claims that granting the petition could assist Entergy with its bargaining position and "would not create any tangible momentum towards a regional product; it instead gives one company a bargaining tool not held by others."¹²

Numerous parties claim that the proposal is deficient because it lacks needed information on which to base a decision. For example, TDU Systems cite incompleteness regarding performance-based ratemaking, planning, congestion management, and market

¹¹South Mississippi at 8, 10.

¹²Arkansas Commission at 9.

monitoring. East Texas Cooperatives¹³ state that the proposal does not specify what control area services the Transco would provide, and South Mississippi complains that the continued effectiveness of existing agreements is not addressed. Along this vein, Ralph R. Mabey, Chapter 11 Trustee for Cajun Electric Cooperative, Inc. (Cajun) argues that the proposal, as submitted, "is so vague that meaningful evaluation may not be possible;"¹⁴ thus, Cajun argues that the Commission should either deny the petition as overly vague, or order a hearing.¹⁵

Among the intervenors' criticisms of the specifics that are included in the proposal, those related to independence and governance predominate. Many parties believe that the structure of the proposed Transco would not permit the board to act independently of the Member Companies. These comments are discussed in detail below.

While not commenting on the merits of Entergy's proposal, Consumers Energy Company (Consumers Energy) and Enron Power Marketing, Inc. (Enron) support the formation of transcos generally. Enron, noting that industry efforts to develop RTOs "have been stymied by lack of Commission guidance,"¹⁶ urges the Commission to act on the proposal quickly and comprehensively.

The Georgia Transmission Corporation (GTC), a not-for-profit transmission owner and provider in Georgia, does not endorse the specifics of the proposal but supports the formation of transcos as a matter of principle and "believes that a managing board structured possibly along the lines of the Entergy proposal can satisfy [the independence] requirement"¹⁷ of Order No. 888. Similarly, CTA, a not-for-profit corporation established to encourage the formation of independent transmission entities, comments that the Commission has not yet addressed issues of independence, governance and

¹³East Texas Cooperatives include East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., which jointly protested the petition.

¹⁴Cajun at 8, noting the absence of details about how the Transco will operate the grid to ensure reliability and will interact with market participants which operate their own control areas, and about how it will enforce the code of conduct.

¹⁵See also New Orleans at 13-15, NRECA at 4-5, Louisiana Commission at 4, and Mississippi Associations at 4-5.

¹⁶Enron at 3.

¹⁷GTC at 7.

conflicts of interest in the context of transcos and urges the Commission to do so here. Although CTA does not address Entergy's proposal specifically, CTA states its belief that transcos are consistent with the objectives of the ISO principles.

Finally, several parties recommend some measure of caution in responding to Entergy's proposal. For example, TransÉnergie espouses the benefits of merchant transmission interconnections and urges the Commission to avoid inadvertently foreclosing transmission options in acting on facts specific to Entergy's petition.¹⁸

In its May 20 answer, Entergy states that the protesters misunderstood the scope of its request in that it was not seeking declaratory relief regarding those portions of its proposal not yet completed. Rather, Entergy states that it only seeks guidance with respect to portions which are sufficiently complete to permit review, and in particular with respect to ISO Principle Nos. 1 and 2, the principles involving independence and conflicts of interest. Entergy argues that the Commission should not delay review until the final RTO rule is issued because work to develop an adequate RTO could continue in the interim. Entergy revises certain aspects of its board selection procedures and rebuts protesters' other objections regarding compliance with Principles No. 1 and 2.

Discussion

Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1999), the notices of intervention of the Arkansas Commission, the Louisiana Commission, and the Mississippi Commission, and the timely, unopposed motions to intervene of the entities listed in the Appendix serve to make them parties to this proceeding. Also pursuant to Rule 214, we will grant the timely, opposed motion to intervene of CTA. We find that good cause exists to grant the motion. We are satisfied that CTA has expressed an interest in the outcome of this proceeding that is not represented by another party and that its participation is in the public interest.

Given the early stage of this proceeding and the absence of undue delay and prejudice, we find good cause to accept the motions to intervene out-of-time filed by the Texas Commission, Duke Energy NA, Cleco, USGen, and PG&E Energy, the late-filed intervention and protest of TIEC, and the late-filed comments of the FTC.

¹⁸TransÉnergie at 1-2.

We will deny the motions for summary disposition, and AECC's alternative motion to hold the petition in abeyance and request for hearing, as discussed below.

Although answers to protests generally are prohibited under 18 C.F.R. § 385.213(a)(2), we nevertheless find good cause to allow Entergy's answers in this proceeding because they provide additional information that assists us in the decision-making process. We will also grant AECC's motion to lodge.

Scope of the Commission's Response

The parties raise several issues related to whether and how the Commission should respond to Entergy's petition. Entergy's filing admittedly lacks many details, and it would be an insufficient basis on which to ultimately approve any form of transmission entity. Entergy admits that more information and detail will be necessary before it seeks actual approval under FPA sections 203 and 205. Therefore, our declaratory order is limited to those matters that Entergy has developed sufficiently for an informed decision. While we recognize the preliminary nature of the petition, we disagree that we must have a clear and complete proposal including rates, reliability plans, congestion management procedures, and so forth, in order to offer preliminary guidance on the issues addressed below. Our order is intended to provide guidance with respect to certain limited issues of independence and governance as they apply to Entergy's proposal. As those portions of the proposal are generally defined well enough to support informed guidance, the declaratory order procedure is an appropriate vehicle. Accordingly, we will deny AECC's motion for summary disposition and alternative motions to hold in abeyance and for hearing, and LPPC's request to dismiss the petition.

Regarding the argument that a declaratory order is the wrong forum in which to make new RTO policy, we are not assessing Entergy's Transco under the RTO NOPR, but are applying established ISO principles. These principles will remain in effect until superseded by a final RTO rule. Before Entergy can gain approval of a regional entity under our ISO principles, it must provide an adequate proposal in the areas discussed here and in those areas we have not yet considered. In addition, once a final RTO rule is issued, Entergy will have to meet all applicable requirements in the final rule.

We note that the issue of passive ownership is among the many issues being considered in the RTO rulemaking, and the final rule may set different standards. This order in no way prejudices what the result will be in the final rule. In that regard, whatever guidance is offered in this order is subject to determinations made in the final rule. Entergy will be subject to—and agrees to adhere to—any new requirements adopted for RTOs in the future.

Passive Ownership

A central issue in Entergy's filing is whether passive ownership of a transmission company by a generating and marketing company can meet the Order No. 888 ISO principles. We conclude that passive ownership of a transmission entity by a generating company or other market participant could meet the ISO principles relating to independence and governance if the proposal is properly designed. As we explained in Order No. 888, "[t]he primary purpose of an ISO is to ensure fair and non-discriminatory access to transmission services"¹⁹ The ISO proposals that we have approved have accomplished this by having transmission owners retain their ownership of transmission facilities but turning the operation of their facilities over to an independent entity. Here, Entergy proposes to separate generation and transmission operations and ensure non-discriminatory access through passive ownership and restrictions on interactions between the Transco and Member Companies. Entergy's proposal, if modified to address certain issues, could comply with the independence requirements of the ISO principles. Accordingly, we will deny the three motions for summary disposition. However, in this particular case, there are certain areas that are not fully developed and other areas that cause us concern; these are discussed below.

Specific Issues

The comments have raised concerns on some of the specific components of this proposal, which we discuss below. We note that many other aspects of Entergy's proposal are not complete and thus our guidance is limited. Our silence on a particular subject does not indicate either our approval or disapproval.

Board Selection and Removal

In its original proposal, Entergy provided two options for selection of the Transco board.²⁰ After a slate of candidates is chosen by an executive search firm, Entergy's preferred proposal was for the Members to make the actual board selection. Entergy indicated, however, that it would not object to selection by a stakeholder committee, including Members. In its reply to comments, Entergy agreed to adopt the second option as its proposal and allow a stakeholder committee to make the board selection. Neither the original proposal nor the reply to comments describes in detail how the stakeholder committee will be selected. The LLC Agreement indicates that board members may be

¹⁹Order No. 888 at 31,730.

²⁰Petition at 11.

removed for cause ²¹ either by the board or by a super majority of Members; in either case, removal would be subject to FERC approval.

A number of intervenors argued against board selection by Members.²² Entergy's second option, and now its primary proposal, to rely on a stakeholder committee to make the board selection was addressed by TIEC,²³ which states that a stakeholder committee should include representatives from the retail customer sector, transmission owners, and wholesale transmission customers.

We find acceptable Entergy's revised proposal to use a stakeholder committee for board selection, assuming the committee is fair and balanced and does not allow any one type of customer to veto particular candidates. However, the ultimate application filed by Entergy must include a more complete description of how the stakeholder committee will be selected and will operate, how adequate representation of all stakeholders is assured, and how voting will be conducted. The board selection process is important for assuring independence.

We believe that the ability of Member Companies to remove directors, even subject to FERC approval, could undermine a board member's independence. The alternative procedure, *i.e.*, removal for cause, would be acceptable.

Board's Fiduciary Duty

Several parties raise the issue whether the Transco's board will have a fiduciary responsibility to protect the shareholders' interests, that will undermine its independence.²⁴ They assert that, under Delaware corporate law, the board must consider Member Companies' interests. Entergy responds that the Transco board "would have a fiduciary

²¹The LLC Agreement's definition of "cause" enumerates six specific reasons for removal, including conviction of a felony and breach of any noncompetition or confidentiality obligation.

²²See, *e.g.*, Aquila at 10-11, Lafayette and MEAM at 7, and New Orleans at 9.

²³TIEC at 2-3.

²⁴LPPC at 7, Dairyland at 9; SMEPA at 19-20; Texas Cooperatives at 11; APPA at 9-10.

duty to maximize the value of the members' interests only in the transmission resources held or controlled by the Transco," and not the members' generating interests.²⁵

Intervenors are correct that the fiduciary duty of the Transco board is an important consideration in assessing the Transco's independence. Although the general rule in Delaware appears to be that directors may act in the best interests of the corporation if its interests diverge from those of the shareholders,²⁶ there are exceptions.²⁷ Entergy and other Members must address this issue in more detail in any future application. Should applicants find that Delaware law requires board members' fiduciary duties to extend even to Member Companies' non-transmission interests, then Entergy's passive ownership arrangement may not satisfy the independence requirements for an ISO.

Attraction of Capital

Initially, the Member Companies, ". . . will transfer ownership or lease their transmission assets to the LLC (the Transco) in return for passive ownership interests in the LLC in proportion to the value of the transmission assets contributed by the Member Companies."²⁸ Those companies who transfer ownership or control of transmission assets to the Transco at its formation become the initial Members of the Transco. Additional equity capital can be raised by the initial Members or other entities making capital contributions to the Transco. These capital contributions can be in the form of money or property, including transmission assets.²⁹ New entities who contribute equity

²⁵ Answer at 26, emphasis in original.

²⁶ See *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

²⁷ See, e.g., *Revlon, Inc. v. McAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) (holding that directors must take action to maximize shareholder wealth when the corporation is going to be sold); *Anadarko Petroleum Corp. v. Panhandle Eastern Corp.*, 545 A.2d 1171 (Del. 1988) (the directors of a subsidiary were obligated to manage the affairs of the subsidiary in the best interests of only the parent and its shareholders, and not prospective shareholders).

²⁸ Petition at 9-10.

²⁹ LLC Agreement at 6 and A-2.

capital in such manner become Members of the Transco. Capital contribution of transmission assets is normally valued at the assets' net depreciated book value.³⁰

A complicating factor when the Transco seeks to issue additional stock in exchange for capital contributions (whether these contributions are in the form of money or transmission assets) is that existing Members must be allowed to bid for such stock.³¹ Third parties are also allowed to bid, but the procedures for third party bids are not specified. If there are multiple bids for a stock issuance, the Board makes the decision between or among them based on the best interest of the Transco.³² This bidding requirement would appear to apply even when a non-member seeks to add its transmission facilities to the Transco in exchange for stock in the Transco, and thereby become a Member.

The Arkansas Commission and other parties raise concerns about how effectively the Transco will be able to raise capital independently from the existing Members.³³

The petition is insufficiently clear as to how Entergy's proposed bidding mechanism for securing additional equity interest will work and what its impact on capital attraction would be. An actual application by Entergy and other Member Companies should explain more fully how this mechanism would work from the perspective of existing Members, third parties, and the Transco. It is important that a Transco have ample and timely access to equity funding to perform its transmission

³⁰The LLC Agreement indicates that in the event those transmission assets use some other valuation basis for ratemaking purposes, that different valuation will be the basis for the capital contribution valuation. We assume that this reference is to ratemaking used after the assets are transferred to the Transco and that the applicable ratemaking in this context is the ratemaking used by this Commission.

³¹Section 3.3(b) of the LLC Agreement provides, in part, that "[t]he Company shall give written notice of any offering and issuance of Issued Interests (the 'Issuance Notice') to each of the Members, which notice shall identify the terms and conditions of the issuance and irrevocably offer each Member the opportunity to bid for the right to purchase the Issued Interests (each, a 'Bid'). Within ten (10) days following receipt of the Issuance Notice, each Member shall have the right to submit its Bid in writing to the Board."

³²LLC Agreement at 5-7.

³³Arkansas Commission at 11; see also Texas Cooperatives at 13, Texas Commission at 10, Clarksdale at 3.

maintenance and expansion functions. The purpose of the bidding process must also be fully explained. In particular, the application should explain why contributions of existing transmission facilities to the Transco should be subject to a bidding process.

Transco Contracting with Member Companies

The proposal states that any contracting by the Transco with affiliated companies must be done as if at arm's-length.³⁴ There is no detail beyond that provision that would further restrict what contracting may be done with an affiliate. The Arkansas Commission claims that the ability to contract with affiliates provides the potential to erode independence.³⁵ Arkansas Consumers argues that all contracting with affiliates should require competitive bidding.³⁶

Given the petition's lack of specificity, it is difficult to give specific guidance regarding contracting with Member companies. However, we note two aspects of this activity. First, as to any sales of electric energy (e.g., ancillary services and reliability must-run units) from Entergy affiliates or other jurisdictional Member companies to the proposed Transco, the rates, terms and conditions will be subject to section 205 filings. Second, as to other goods and services, Entergy and other Member Companies should ensure that contracting with the proposed Transco does not result in any undue favoritism or discrimination among potential suppliers.

Other Concerns

Our review of Entergy's proposal and the comments of other parties brought up some additional issues that should be addressed in the application. For example, Entergy and the other applicants should address the issue of employees being able to move freely between the Transco and the Member Companies and whether restriction on this

³⁴Petition at 10. The LLC Agreement currently states at page 18 that: "The Company shall not enter into any agreement or contract with a Member, any Affiliate of a Member, or any agent of a Member unless any such agreement or contract shall contain substantially such terms and conditions as will be contained in a similar agreement or contract entered into by the Company as the result of arms-length negotiations from a comparable unaffiliated disinterested third party." Section 5.19 (a).

³⁵Arkansas Commission at 12.

³⁶Arkansas Consumers at 23.

movement is appropriate. The application should address whether it is appropriate for the market monitoring unit to be internal to the Transco.

There are other areas, some relating to independence, that have not been addressed at all because Entergy has not made these elements a part of this filing. Entergy states that many of these details must await the input of other participants with whom Entergy will have to negotiate. This is reasonable, but obviously could affect whether any final application would be deemed to satisfy the Commission's requirements regarding independence.

Conclusion

Passive ownership of a transmission company by one or more power market participants is acceptable if designed, in all respects, to meet the independence and other requirements of the ISO principles.

The Commission orders:

(A) The petition for declaratory order filed by Entergy is hereby granted, as discussed in the body of this order.

(B) The timely, opposed motion to intervene of CTA is hereby granted.


(C) The late-filed motions to intervene of the Texas Commission, Duke Energy NA, Cleco, USGen, PG&E Energy, and TIEC, and the FTC's motion to file untimely comments are hereby granted.

(D) The motions for summary disposition and other relief of AECC, TDU Systems, and LPPC are hereby denied.

(E) AECC's motion to lodge is hereby granted.

By the Commission. Commissioner Massey dissented with a separate statement attached.

(S E A L)


David P. Boergers,
Secretary.

Appendix

Timely, Unopposed Motions to Intervene

Alabama Electric Cooperative, Inc. ‡
Alcorn County Electric Power Association ‡
American Iron and Steel Institute (AISI)
American Public Power Association (APPA)
Aquila Energy Marketing Corporation (Aquila)
Arkansas Cities³⁷
Arkansas Electric Cooperative Corporation (AECC) ‡
Arkansas Electric Energy Consumers (Arkansas Consumers)
California Electricity Oversight Board
Central Electric Power Association ‡
Chemical Manufacturers Association (CMA)
Clarksdale Public Utilities Commission (Clarksdale)
Commonwealth Edison Company
Consumers Energy Company (Consumers Energy)
Council of the City of New Orleans (New Orleans)
Dairyland Power Cooperative (Dairyland)
Duke Energy Trading and Marketing, L.L.C.
East Mississippi Electric Power Association ‡
East Texas Electric Cooperative, Inc. (East Texas)
Electric Clearinghouse, Inc. (Clearinghouse)
Electric Power Associations of Mississippi, Inc. (A.A.L.) (Mississippi Associations)
Electricity Customers Resource Council (ELCON)
Energy Consumers for Choice in Mississippi
Enron Power Marketing, Inc. (Enron)
FirstEnergy Corp.
Georgia Transmission Corporation (GTC)
Golden Spread Electric Cooperative ‡
Kansas Electric Power Cooperative, Inc. ‡
Lafayette Utilities System (Lafayette)
Large Public Power Council (LPPC)
Louisiana Energy Users Group (Louisiana Group)
Mobil Oil Corporation (Mobil)
Monroe County Electric Power Association ‡
Municipal Energy Agency of Mississippi (MEAM)

³⁷Arkansas Cities consist of 13 municipal corporations, political subdivisions of the state of Arkansas, or nonprofit corporations operating a municipal utility system.

Natchez Trace Electric Power Association #
National Rural Electric Cooperative Association (NRECA)
New York Mercantile Exchange
North Carolina Electric Membership Corporation ‡
North East Mississippi Electric Power Association #
Northcentral Mississippi Electric Power Association #
Nucor Steel
Nucor-Yamato Steel Company
Occidental Chemical Corporation
Otter Tail Power Company
PECO Energy Company
Pontotoc Electric Power Association #
Prentiss County Electric Power Association #
Ralph R. Mabey, Chapter 11 Trustee for Cajun Electric Power Cooperative, Inc. (Cajun)
Sam Rayburn G&T Electric Cooperative, Inc. (Sam Rayburn)
Seminole Electric Cooperative, Inc. ‡
South Mississippi Electric Power Association (South Mississippi) ‡
Southwestern Electric Power Company
Tallahatchie Valley Electric Power Association #
Tex-La Electric Cooperative of Texas, Inc. (Tex-La)
Tippah Electric Power Association #
Tishomingo County Electric Power Association #
Tombigbee Electric Power Association #
TransÉnergie U.S. Ltd. (TransÉnergie)
Transmission Dependent Utility Systems (TDU Systems)
Tuscon Electric Power Company
Virginia Electric and Power Company
4-County Electric Power Association #

‡ members of TDU Systems, which moved to intervene both jointly and in their individual capacities

members of Mississippi Associations, which moved to intervene both jointly and in their individual capacities