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REGULATORY COMMISSION

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May 4, 1999

FEDERAL EXPRESS

Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
Room 1A, East
888 First Street N.E.
Washington, D.C. 20426

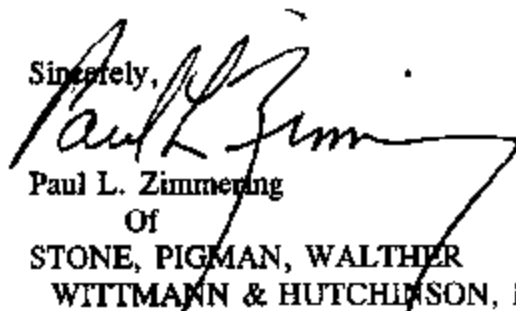
Re: **Entergy Services, Inc.**
Docket No. EL99-57-000

Dear Mr. Boergers:

Enclosed is the original and fifteen copies of the Notice of Intervention and Protest on Behalf of The Louisiana Public Service Commission. Please file the original and fourteen copies into the record of the above-captioned proceeding, and return the extra copy to me, stamped with the filing information, in the enclosed postage prepaid, self-addressed envelope.

Thank you very much for your cooperation.

Sincerely,



Paul L. Zimmering
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WITTMANN & HUTCHINSON, L.L.P.

Special Counsel to the
Louisiana Public Service Commission

PLZ/sbc
Enclosure

cc: All Counsel of Record (w/encl.)

FERC DOCKETED

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affiliate of ESI. The names, addresses and telephone numbers of the following persons on whom service is to be made and to whom communications are to be addressed in this proceeding are as follows:

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This Notice of Intervention and Protest is timely filed under Rule 210(b) of the FERC's Rules of Practice and Procedure and serves to make the Louisiana Commission a party to these proceedings.

PROTEST

The Louisiana Public Service Commission urges the FERC to deny, at this time, the request by ESI for a declaratory order "providing preliminary Commission guidance" on its proposal to create a TRANSCO. The Entergy proposal suffers from numerous shortcomings requiring rejection by the Commission. The overriding flaw in Entergy's proposal is its lack of specificity concerning the most important aspects of the Commission's ISO principles contained in Order Nos. 888 and 888-A. In addition, while ESI claims that its TRANSCO

proposal "would control and operate Entergy's transmission system and the transmission of the entities that would become members of the TRANSCO . . ." (Entergy Petition at 1), and that "the proposal is intended to result in the creation of a truly regional entity" (Entergy Petition at 31), only ESI is sponsoring this proposal. There is no indication that Entergy has reached agreement on any aspect of this proposal with other potential participants or stakeholders. The Louisiana Commission is charged with the responsibility to protect the native load customers in Louisiana that are served by two Entergy operating companies, ELM and Entergy Gulf States, Inc. ("EGSI"). The Entergy proposal is devoid of any explanation of how these customers will be served under the proposed TRANSCO and no detail is provided as to whether and how ratepayers will be compensated for the transmission facilities that were built to service the system companies and paid for with ratepayers' dollars. These issues are significant, particularly prior to the implementation of retail competition.

For these reasons, the Louisiana Commission respectfully requests that, as with the other Regional Transmission Organizations ("RTOs") considered by the Commission, Entergy be required to negotiate with other potential participants, state regulatory authorities, consumer groups, etc., and refile its proposal after the parties have reached at least basic agreement on the 11 Commission ISO principles. In the alternative, the Commission should set this matter for hearing.

1. Entergy's Proposal Lacks Even The Minimum Detail Required For Commission Approval.

The proposal submitted by ESI is wholly lacking in substance. The Commission is basically being asked to approve an "outline" of a TRANSCO, and Entergy will fill in the

blanks at a later date. The Louisiana Commission takes no position at this time as to whether a TRANSCO as opposed to some other type of RTO is most appropriate. It does believe that the FERC should not approve, even in principle, a proposal that lacks any detail.

Of the 11 Principles for an ISO outlined by the Commission in Order Nos. 888 and 888-A, Entergy provides no concrete proposal regarding at least eight of those Principles. For example, Principle No. 3 requires the ISO to provide open access to the transmission system at non-pancaked rates pursuant to a single gridwide tariff. Entergy's proposal regarding open access is as follows:

As discussed above, until further discussions and negotiations take place, it has not been possible to formulate a proposed tariff for the TRANSCO. Rather, the terms of the tariff *are expected to be devised* through a joint effort among Entergy and the other Member Companies, as well as other stakeholders and state regulatory authorities."

(Entergy Petition at 29) (emphasis added).

Therefore, it would be inappropriate for the FERC to determine, even preliminarily, that the requirements of Principle No. 3 have been satisfied.

Principle No. 4 requires the ISO to have primary responsibility for ensuring short term reliability of grid operations. Entergy's proposal regarding this requirement is as follows:

"[T]he Member Companies will provide a detailed summary of the procedures governing the TRANSCO's exercise of operational control over the transmission facilities and the procedures for responding to emergencies. These procedures *will be developed* through a process that permits input from market participants."

(Entergy Petition at 33) (emphasis added).

Once again, no proposal has been offered.

In similar fashion, Principle No. 6 requires an ISO to identify constraints on the system and methods that will be utilized to relieve those constraints. Entergy's response is that while a proposal will be submitted that satisfies this principle, "a specific congestion management proposal has not yet been devised . . ." (Entergy Petition at 35). Principle No. 7 requires that the ISO have appropriate incentives for efficient management and administration. Entergy's response is simply that it "will develop appropriate incentives and file them with the Commission." (*Id.*).

In addition to the foregoing, there are three areas in which the proposal's lack of specificity is particularly problematic. First, there is no indication of how transmission and ancillary services will be priced. As previously discussed, Entergy's proposal did not include an open access transmission tariff. Entergy freely admits that "the TRANSCO's pricing provisions have yet to be determined . . ." (Entergy Petition at 36). While the Louisiana Commission understands that it takes time to work out the specifics of a pricing proposal, it is inappropriate for Entergy to request even preliminary *approval* of a TRANSCO without inclusion of *any* such pricing proposals.

Second, lack of detail is also a concern in Entergy's proposal for Performance Based Regulation ("PBR"). Entergy's PBR proposal is as follows:

"At this juncture, Entergy will propose to other potential Member Companies that the TRANSCO's rates will be incentive-driven by using some form of performance based ratemaking. This PBR would incent the TRANSCO to maximize throughput, relieve congestion, and enhance reliability. Developing the precise PBR proposal -- including how it will affect both transmission users and the TRANSCO -- will be done when a Section 205 filing is made."

(Entergy Petition at 37).

Entergy's promise to develop a PBR proposal cannot support Commission approval, even in principle.

Finally, Entergy's filing is devoid of any discussion regarding the costs associated with the TRANSCO corporate restructuring. There is no indication of what investment will be required to set up the TRANSCO, what ongoing expenses will be, who will pay for those costs, and what impact on transmission and ancillary services rates is expected. Without such information, the FERC should not be asked to give even preliminary approval to this proposal.

2. Entergy's Proposal Fails To Take Into Account The Needs And Views Of Other Potential Market Participants And Stakeholders.

One common thread runs throughout the Entergy proposal: Give us preliminary approval and then we will go out and negotiate with other potential market participants and stakeholders. The Louisiana Commission believes that such an approach puts the cart before the horse. In addition, this approach is inconsistent with the approach taken in RTO proposals already considered by the Commission.

Previous filings made by the participants in the other five ISOs that have been reviewed by the FERC demonstrate a far greater level of detail in their initial proposals. Moreover, they were multi-company filings and, in all but one early case, they were submitted to the FERC only after extensive discussions and negotiations had taken place among participants, regulators, and other stakeholders.

In *Pacific Gas and Electric Company*, 77 FERC ¶61,204 (1996), a §203 filing was made by three companies. That filing included market power analyses and bidding and pricing proposals. In addition to the fact that the filing was made by three different utilities, it

was made with the encouragement of the California Public Utilities Commission. The FERC noted:

"The Companies' proposal is the product of a lengthy, ongoing process involving the Companies, the California Commission, the California Legislature and widespread stakeholder participation. These efforts have resulted in a set of proposals that provide an acceptable framework for the Commission to grant preliminary approval of the ISO and PX, subject to the conditions, modifications, and further information required herein."

In *Central Hudson Gas & Electric Corporation*, 83 FERC ¶61,352 (1998), eight members of the New York Power Pool jointly submitted a proposal for the formation of an ISO. That filing was a §205 filing and included a new open access tariff. Similarly, in *New England Power Pool*, 79 FERC ¶61,374 (1997) a proposed open access tariff was filed along with a §203 filing, and the NEPOOL filing resulted from "extensive negotiations and delicate compromises."

In *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶61,231 (1998), ten public utilities joined together to file proposals under both §203 and §205 that included an open access transmission tariff for the Midwest ISO. The proposals were the result of two years of negotiations among twenty-five utilities in the region. Finally, in *Atlanta City Electric Company*, 77 FERC ¶61,146 (1996), nine members of the PJM pool jointly filed a series of agreements intended to comprehensively restructure that pool. Both §203 and §205 filings were made that included a proposed open access tariff that would be applicable to the requested ISO.

These other cases considered by the FERC demonstrate that in virtually all circumstances: (1) significant detail, including the filing of a proposed open access tariff, was included; (2) filings were made by a number of parties; and (3) those filings were made *after*

extensive negotiations among potential participants in the ISO as well as other stakeholders such as state public utility commissions. Although the FERC may have deferred ruling on the open access tariffs in some of these cases, the FERC was made aware of the provisions of the new tariffs when it reviewed the ISO proposals. Moreover, the guidance already given by FERC in these prior cases should help Entergy to formulate a more detailed proposal.

3. The Entergy Proposal Is Devoid Of Any Details Regarding Native Load Customers.

Two of the Entergy operating companies, ELI and EGSI are regulated by the Louisiana Commission and serve native load customers in Louisiana. Pursuant to Order Nos. 888 and 888-A, transmission customers have priority network service under the Entergy OATT and ELI and EGSI are able to reserve sufficient transmission capacity for expected load growth. These same customers have paid for Entergy's transmission facilities in retail rates. The Entergy proposal fails to address any issues related to its native load customers.

Pursuant to Order Nos. 888 and 888-A, transmission providers are able to reserve network capacity to meet the reliability needs of its native load customers both for their present transmission systems and for transmission that is built in the future. Order No. 888-A, 78 FERC ¶61,220 (1997). Louisiana has not yet adopted retail competition. ELI and EGSI still have an obligation to serve Louisiana native load customers. The Entergy proposal fails to address how these needs will be met by the TRANSCO, which likely would not be subject to regulation of the Louisiana Commission.

Further, the Entergy proposal is to transfer its transmission assets at depreciated book value. This is no discussion, however, regarding whether and how its native load

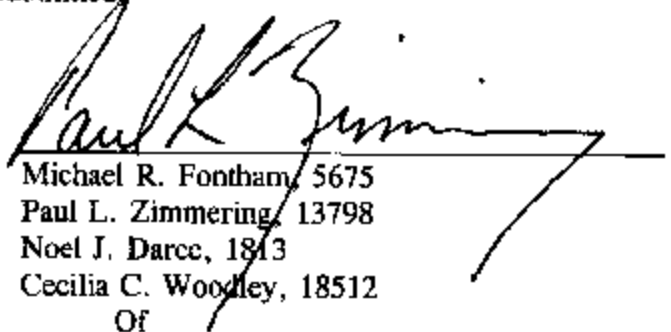
customers will be entitled to compensation in any fashion for the loss of transmission assets, nor is it determinable what native load customer may have to pay to access that transmission capacity after it has been transferred to the TRANSCO.

CONCLUSION

For all of the reasons set forth above, the Louisiana Commission urges the FERC to require Entergy to resubmit its TRANSCO with more detailed provisions as to its operation, pricing and costs, to address issues related to native load customers, and to engage in negotiations with potential stakeholders, in an effort to reach consensus on as many issues as possible, prior to that submission. In the alternative, the Louisiana Commission respectfully requests that this Docket be set for hearing.

Respectfully submitted,

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C E R T I F I C A T E

I hereby certify that a copy of the above and foregoing Notice of Intervention and Protest on Behalf of the Louisiana Public Service Commission has been served upon all counsel of record by overnight mail or by placing same in the United States mail, postage prepaid and properly addressed, this 4th day of May, 1999.

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