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May 4, 1999

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

VIA FEDERAL EXPRESS


RE: Entergy Services, Inc.
Docket No.: EL99-57-000
Our File No.: 4388-28

Dear Mr. Boergers:

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, the Louisiana Energy Users Group submits for filing an original and fifteen (15) copies of a Motion to Intervene and a Notice of Protest in the referenced proceeding.

Please file-stamp and return the extra copies of the Motion to Intervene and the Notice of Protest in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter.

Very truly yours,


J. Randy Young

FERC DOCKETED

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ORIGINAL

FILED
NOTICE
DOCKET NO. EL99-57-000
FEBRUARY 11 1999
WASHINGTON, D.C.

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

ENTERGY SERVICES, INC.

DOCKET NO. EL99-57-000

**NOTICE OF PROTEST OF
LOUISIANA ENERGY USERS GROUP**

The Louisiana Energy Users Group ("LEUG") submits this Protest in the captioned proceeding in accordance with Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC"). LEUG is an unincorporated trade association comprised of Louisiana industrial concerns which has separately filed a Motion to Intervene in this proceeding. LEUG members have a significant interest in this proceeding in their capacity as purchasers of electricity and transmission service from one or more of Entergy's subsidiary operating companies in Louisiana. All of LEUG's member companies purchase significant quantities of electricity from Entergy. Additionally, some of LEUG's members currently self-generate electricity, some portion of which is sold at wholesale and transmitted over Entergy's transmission system. Entergy's Transco proposal may affect both the cost and availability of transmission service to LEUG members.

Entergy has been discussing the concept of a Transco since April, 1998, when it reviewed this concept at FERC's 1998 Public Conference on Transmission Policy. In previous comments submitted to the FERC, LEUG has been generally supportive of the Transco concept while at the same time being very careful to reserve judgment until a more defined structure is available for review.¹ Consistent with its previous comments, LEUG files this Protest to address certain areas revealed in Entergy's petition for declaratory order which are or may be problematic. LEUG's concerns are outlined in Exhibit "A" attached hereto. LEUG understands the Texas Industrial Energy Consumers Group ("TIEC") has or will express similar concerns regarding Entergy's petition.

Respectfully submitted:



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¹ See comments filed by LEUG in FERC Docket: PL98-5-003, Inquiry Concerning the Commission's Policy on Independent System Operators.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U. S. Mail, postage prepaid, upon the parties as listed on the Federal Energy Regulatory Commission's Official Service List

This 4th day of May, 1999.

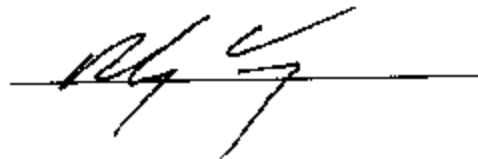
A handwritten signature in black ink, appearing to be "M. G.", is written over a horizontal line.

Exhibit A

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

Concerns of LEUG

Subject to curing certain defects described herein, the Louisiana Energy Users Group (LEUG) generally supports the concepts embodied in Entergy's Transco proposal as described in Entergy's Petition in Docket No. EL99-57-000 as a positive step toward the establishment of Regional Transmission Organizations (RTOs). The Commission should note that LEUG only sees an Entergy Transco as a first step toward a RTO. LEUG, who has several members that are also members of ELCON, supports ELCON's stated view that ultimately there should be only three RTOs, one each for the Eastern Interconnection, Texas Interconnection and Western Interconnection. In addition, LEUG believes that Entergy's Transco will have to evolve significantly further over time in order to meet the ideal of a RTO. Nevertheless, LEUG generally supports Entergy's proposal and asks the Commission to issue a declaratory order on the proposal by July 1999 as requested by Entergy. It is important to have, as soon as possible, an indication of the Commission's general reaction to the Entergy Transco concept, and direction as to needed modifications. This will permit Entergy to move forward to develop an actual Transco that combines transmission assets from multiple owners into a single entity. This is critical to the development of competitive generation markets at the retail and wholesale levels. Because Entergy has committed itself

to "... abiding by the outcome of any final and non-appealable rulemaking order that might modify any relevant regional transmission organization related policies or principles¹," this decision need not await the outcome of a generic proceeding.

While LEUG is generally supportive of Entergy's proposal because of Entergy's commitment to abide by any RTO rulemaking, LEUG has several concerns that must be addressed in the Commission's declaratory order. These concerns are in regard to the following areas:

- Election of Board Members;
- Performance-Based Ratemaking;
- Transmission "Cost Shifting";
- Control Area Operations;
- Size and the Competitiveness of Power Markets; and
- Market Monitoring.

Election of Board Members

As proposed, the Transco would be a Limited Liability Company ("LLC") created under Delaware law that will be managed and governed by an independent, seven-member Board. The Board members would have no financial interest in or ties to the Member Companies, other than those specified in the LLC Agreement. The initial slate of potential Board members would be selected by a nationally-recognized executive search firm that is

¹ See Footnote 5 on Page 4 of the April 5, 1999 Petition.

itself selected by the Member Companies. All of the Member Companies will be transmission owners initially. This approach is consistent with that approved by the Commission for the Midwest ISO in Midwest Independent Transmission System Operator, Inc., et. al., 84 FERC ¶ 61,231 (1998).

While the development of the slate of Board candidates is consistent with Commission precedent, the actual election of the Board is not. Under Entergy's proposal the Member Companies, all of which will initially be participating transmission owners, would elect the initial Board members from the slate of candidates established by the search firm. Under this process, Entergy, and the other Member Companies, would clearly be able to select Board members that have backgrounds that favor transmission owner positions on various issues. This initial election would result in a Board that would be anything but independent. The only way to ensure that the Board is initially independent would be to require that the Board be initially elected by a Stakeholder Committee, not the Member Companies alone.

Such a Stakeholder Committee should include representation by each retail customer sector (i.e., industrial, commercial and residential) in addition to representation from transmission owners and wholesale transmission customers. Note that Entergy indicated on Page 11 of its Petition that it ". . . will not oppose the use of an appropriately structured Stakeholder Committee to make the final board selection if the Commission believes such a process is critical to ensure independence." Also, note that the Commission considered the initial election of the Board to be of such importance in Midwest Independent Transmission

System Operator, Inc., et. al. that it required that the Midwest ISO Participants allow 60 days for non-transmission owners to join the Midwest ISO prior to allowing the initial election of the Board to take place.²

After the initial election of Board members, Entergy proposes that Board members whose terms are not concluding elect replacements when vacancies on the Board arise (either through removal or the expiration of a Board members' term). In the event remaining Board members could not agree on the selection of replacements, replacements would be elected by Entergy and the other Member Companies. LEUG protests this latter provision. To continue to assure that the Board cannot be influenced by Entergy (and the other Member Companies) and to ensure the Board is accountable to someone, Board member vacancies should be filled by an election of the Stakeholder Committee, not remaining Board members or Entergy (and the other Member Companies). LEUG asks the Commission to direct Entergy to correct this problem.

Entergy proposes to modify the Transco's Board member replacement scheme if at some point more than 50% of the interests in the Transco are held by Member Companies that are not current transmission-owning entities. In this event, vacancies on the Board would be filled by a vote of the Member Companies, rather than remaining Board members. LEUG does not object to the idea that eventually the Board could be elected by Member

² Page 23 of Midwest Independent Transmission System Operator, Inc., et. al. 84 FERC ¶ 61,231 (1998).

Companies rather than the Stakeholder Committee. However, the 50% threshold is too low and there are others besides transmission owners who could exert market power through control of the Transco Board. It should be noted the term "transmission-owning entity" has little meaning under the Transco. The initial Member Companies become Member Companies by either transferring ownership of their transmission facilities to the Transco or leasing their transmission facilities to the Transco. Moreover, it is not ownership of transmission alone that is the problem. Rather, it is the control of transmission by any market participant that raises the market power concerns.

LEUG believes that the Commission should not allow the Member Companies to elect the Transco Board unless at least 67% of the interest in the Transco is owned by Member Companies who are not market participants at the time of the election. The 67% threshold would ensure that market participants could not easily unduly influence other non-market participant Member Companies to vote in a manner that favors market participants. By tying the threshold to market participants rather than transmission owning entities, the Commission would ensure the provision covers abuse by both the incumbent vertical utilities of today and the potentially large generation-only entities of tomorrow.

Performance-Based Ratemaking

Entergy has requested guidance from the Commission in regard to whether and under what circumstances it would permit Performance-Based Ratemaking (PBR) style incentive regulation. Entergy describes the type of PBR that it has in mind as one that would incent

the Transco to maximize throughput, relieve congestion and enhance reliability. Entergy also indicated that it will precisely describe its PBR proposal when it makes its Section 205 filing for the Transco.

LEUG is not opposed to the concept of PBR for transmission service. However, any PBR allowed by the Commission should be balanced and fair for both transmission customers and the Transco. PBR should not incent transmission solutions that relieve congestion over generation solutions when generation solutions are more economical. Moreover, PBR should not reward the Transco for actions it would otherwise have taken without PBR and should not reward it for just ordinary performance. Finally, with PBR a Transco should be penalized for bad behavior as much as rewarded for good behavior. Just rewarding good behavior could lead to complacency and mediocrity if goals with rewards become unachievable in a given year of operation.

Transmission “Cost Shifting”

Entergy notes in its Petition, “The prospect of cost shifting among transmission owners could be a deterrent for transmission owners whose existing tariffs are relatively low-cost³.” Entergy goes on to propose that, “. . . in addition to meeting the Commission’s existing pricing standards, the transmission proposal developed by Member Companies

³ See Pages 27-28 of the Petition.

should not result in cost shifting among transmission owners solely due to the implementation of the Transco⁴.”

LEUG supports a “no cost shifting” policy as an acceptable initial standard for developing RTOs providing rate pancaking is eliminated and pricing of embedded transmission costs is not done on a distance-sensitive basis. The removal of rate pancaking is one of the greatest benefits provided by RTOs because it increases the number of suppliers that have the same delivery cost from which a customer can choose. This helps to dilute the market power of incumbent suppliers. It must be recognized that in general the generation cost component of electric service is far larger than the transmission cost component. Therefore, limited cost shifting caused by removing rate-pancaking may be tolerated for transmission rates in order to reap the benefits of the greater savings in generation charges provided from enhanced competition.

LEUG is also concerned with the potential use of distance-sensitive transmission rates to recover embedded transmission costs. Unlike regional postage-stamp or license-plate transmission rates, distance-sensitive transmission rates do not enhance competition. Distance-sensitive transmission rates favor local generation over remote generation by effectively providing a more heavily discounted transmission rate for delivery from local generation versus the transmission rate for delivery from remote generation. Considering that incumbents, especially in retail competition scenarios, own nearly all of the local

⁴ I.d.

generation, distance-sensitive transmission rates elevate the already high market power of incumbents, even if the distance-sensitive transmission rate for long-distance transmission service is significantly lower than the sum of the old pancaked transmission rates. This is because the distance-sensitive transmission rate for delivery from local generation would even be lower.

Distance-sensitive transmission rates are also inconsistent with the Commission's transmission discounting rules under Order Nos. 888, 888-A and 888-B that require that when a discount is offered to a customer over one path to a specific point of delivery, the transmission provider must offer the same discount to all other transmission customers over all unconstrained paths to that same point of delivery. Therefore, under Order Nos. 888, 888-A and 888-B, a transmission provider cannot normally offer a discount based on distance.

As a final note, distance-sensitive transmission pricing is not necessarily efficient. This is because distance-sensitive transmission pricing can incent customers to elect a short distance transaction over a constrained path instead of a long-distance transaction over an unconstrained path. Thus, distance-sensitive pricing can send signals that could adversely affect transmission congestion.

Control Area Operations

Entergy's proposal is silent in regard to whether it will be the NERC control area operator for its transmission system. However, it does appear that by transferring all of its

transmission employees to the employment of the Transco, Entergy may be implying that the Transco may be the NERC control area operator for the Transco.⁵

LEUG believes it is critical that the Transco be the NERC control area operator for its transmission system. This will ensure that Ancillary Services and transaction scheduling will, beyond the shadow of a doubt, truly be provided on a non-discriminatory basis. Note that this does not mean the Transco should perform an economic dispatch function. Economic dispatch is a generation scheduling function that should be performed by each market participant on their own. The Transco's role should be limited to providing reliable transmission service and moment-to-moment balancing of load and generation as the default supplier of Ancillary Services on its transmission system.

Size and Competitiveness

LEUG believes the Commission should provide clear guidance to Entergy that an Entergy-only Transco would not be accepted by the Commission as an RTO. While Entergy is accurate in stating that its transmission system is extensive and covers a broad geographical area, Entergy fails to understand the true meaning of "size." A properly "sized" RTO is one which reduces pancaking of transmission rates and contains generation within its boundaries that is owned by a number of different entities sufficient to allow a reasonable chance for vibrant competition. An Entergy-only Transco would fail the "size" test in both respects.

⁵ See Page 11 of the April 5, 1999 Petition.

An Entergy-only Transco would not further reduce transmission rate pancaking in the region. Thus, an Entergy-only Transco would fail at meeting the Commission's long-held goal of reducing transmission rate pancaking. Moreover, nearly all of the generation contained within the boundaries of an Entergy-only Transco would be owned by Entergy. This would leave Entergy as a dominant market participant in the power markets within the Transco, especially under retail competition. It should be noted that Entergy would retain this dominance, as a result of unreduced rate pancaking and generation ownership inside the Transco, even if Entergy divested itself of its interest in the Transco.

As stated earlier, LEUG believes that ultimately there should be only three RTOs: one each for the Eastern, Texas and Western Interconnections. In addition, LEUG in its post conference comments filed on June 25, 1998 in Docket No. PL98-5-003 proposed four criteria for sizing RTOs. These four criteria are as follows:

1. Installed generation within the boundaries of the ISO [RTO] should not exhibit a market concentration with a Herfindahl-Hirschman Index (HHI) in excess of 1,800.
2. As a minimum, the ISO [RTO] should cover the systems of two different transmission owners.
3. The transmission systems of the ISO [RTO] should be electrically contiguous.
4. A minimum of 90% of power flow created by any transaction internal to the ISO [RTO] should flow on the transmission system of the ISO [RTO].

Notably, the three ideal RTOs would easily meet all four of these criteria.

While LEUG believes these four criteria are still applicable, they recognize that these criteria were proposed in the context of the Commission ordering the establishment of ISOs or other independent transmission entities. Therefore, LEUG believes that these four criteria could be tempered in order to balance the ultimate needs of an RTO with the reality of soliciting voluntary participation in the Transco. Therefore, to strike the proper balance, we strongly recommend that the Commission provide guidance to Entergy which indicates that as a minimum the Transco must meet the following conditions related to size and competitiveness:

- Initially, the Transco must consist of at least one other transmission-owning Member Company besides the Entergy Operating Companies.
- The Transco must be electrically contiguous.
- Within three years of final Commission approval of the Transco, members of the Transco must reduce the total MW for installed generation capacity located within the boundaries of the Transco to below 1,800 by adding new transmission-owning Member Companies, divestiture of generation or some combination of the two.⁶

⁶ Note that for simplicity, transmission capacity across the Transco boundaries would be considered zero and transmission capacity inside boundaries of the Transco would be considered infinite.

- The Transco must conform to all minimum sizing and competitiveness requirements the Commission may generically apply to RTOs.

Market Monitoring

Appendix 3 of Entergy's Petition contains a Market Monitoring Plan. Under the Plan, the Transco would establish a Market Monitoring Unit to monitor compliance with the rules, standards, procedures and practices of the Transco. The Unit would also identify flaws in the Transco operating rules, standards, procedures and practices. Finally, the Market Monitoring Plan would expire five years after the effective date of Transco operations.

LEUG protests several aspects of the proposed Market Monitoring Plan. First, considering that the Transco is a for-profit entity, LEUG believes that the Market Monitoring Unit should be an entity completely separate from the Transco and the Board of the Transco. It would be more appropriate for the Market Monitoring Unit to report to the Stakeholder Committee and the FERC. Second, LEUG believes that the Market Monitoring Plan should be expanded to monitor generation markets in addition to transmission service. Finally, the sunset provision of the Market Monitoring Plan should be deleted.