

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

99MAY -5
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

Docket No. EL99-574000

**PROTEST AND MOTION TO INTERVENE OF THE
LAFAYETTE UTILITIES SYSTEM AND THE
MUNICIPAL ENERGY AGENCY OF MISSISSIPPI**

Pursuant to Rules 211, 212 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385. 211, 212 and 214) and the Commission's April 7, 1999 Notice of Filing, the Municipal Energy Agency of Mississippi ("MEAM") and the Lafayette Utilities System ("LUS") hereby protest and move to intervene in the above-captioned docket. In support of this motion, MEAM and LUS offer the following.

I.

Communications regarding this Motion should be addressed to:

Neil Davis
General Manager
MUNICIPAL ENERGY AGENCY
OF MISSISSIPPI
6000 Lakeover Road
Jackson, Mississippi 39213
Phone: 1-601-362-2252
Fax: 1-601-362-2269

Frank D. Ledoux
Engineering Manager
LAFAYETTE UTILITIES SYSTEM
1314 Walker Road
Lafayette, LA 70506
Phone: 318-291-5838
Fax: 318-291-5995

Robert C. McDiarmid, Esq.
Lisa G. Dowden, Esq.
SPIEGEL & MCDIARMID
Suite 1100
1350 New York Avenue, NW
Washington, DC 20005-4798
Phone: 202-879-4000
Fax: 202-393-2866¹

¹ E-mail addresses: robert.mcdiarmid@spiegelmc.com; lisa.dowden@spiegelmc.com

FERC DOCKETED

MAY - 5 1999

II. PARTIES

MEAM

MEAM is a joint action agency organized on November 21, 1978 under Chapter 363, Laws of Mississippi of 1978, by the Mississippi Cities of Clarksdale, Greenwood, Yazoo City, Leland, Kosciusko, Canton, Durant, and Itta Bena. MEAM was created in order to furnish reliable electric service to its member cities at the lowest possible cost. MEAM engages in the sale and purchase of power for that purpose, from its own generating resources and others obtained under contract, and is interconnected with Entergy-Mississippi (formerly Mississippi Power & Light) under the Power Interconnection Agreement ("PIA") on file with this Commission as Entergy-Mississippi Rate Schedule No. 268. MEAM is a transmission dependent utility ("TDU") with respect to the Entergy System, and maintains its own reserves to firm up its generating resources under its interconnection agreement. MEAM is a member of the Western Systems Power Pool ("WSPP").

LUS

LUS is a municipal utility serving the City and certain areas of the Parish of Lafayette, Louisiana. LUS purchases and sells economy energy, and is also a seller or potential seller of generation to others in its vicinity. LUS is currently engaged in long-term sale arrangements with the Louisiana Electric Power Agency ("LEPA") for 58 MW and the City of Natchitoches (56 MW). Lafayette is also a member of LEPA.

Lafayette is a partial TDU with respect to the Entergy system. It is directly interconnected with both Entergy and with CLECO, pursuant to interconnection agreements currently on file with FERC, and is one of the stronger ties (291 MW) between CLECO and Entergy. Lafayette is a participant in the Southwest Power Pool ("SPP") (and also in the negotiations with respect to a potential ISO/RTG in the SPP). LUS operates as a control area in accordance with SPP and NERC requirements, and is recognized as such by SPP.

III. MOTION TO INTERVENE

Both MEAM and LUS are interconnected with the Entergy system. MEAM is a TDU on the Entergy System and Lafayette is a partial TDU. If the transmission facilities of Entergy are transferred to the proposed Entergy Transco (sometimes referred to herein as the "ET"), both will be required to use the ET described in this filing if it, or anything like it, is created in the future. Thus, MEAM and LUS have an obvious interest in the rates, terms and conditions at which Entergy transmission service may be made available, and in the broader implications of the for-profit transmission entity that Entergy here proposes to create. In addition, LUS and MEAM own transmission facilities in the Entergy service area, which makes them potential members of such a Transco. MEAM and LUS therefore have interests that are not represented by any other party. Their participation is in the public interest.

IV. STATEMENT OF POSITION

A. Introduction

MEAM and LUS protest the Entergy filing in question not so much because of specific problems with it, but because the filing itself lacks sufficient detail to know whether we have specific problems with it, or indeed, on which to base any conclusions at all. There is, in fact, very little that can be asserted with certainty with regard to the broad outlines of the proposal that Entergy has placed before the Commission. It is not surprising that Entergy has been unable to attract the interest of any other transmission owners with this proposal, which is not even well enough formed to be characterized as protean. Thus our problem with this proposal is that it is not a proposal, but rather a cry for assistance in creating a proposal.²

MEAM and LUS are not necessarily opposed to Entergy spinning off its transmission into another subsidiary (a transco), especially if that subsidiary joins a properly constituted ISO. Nor are we necessarily opposed to such a transco acquiring, by ownership or by lease, the transmission facilities of others in the area. In principle, there might be efficiencies of operation to be found in such an arrangement (although MEAM and LUS have seen little evidence of such efficiencies of scale in the transmission area from their own experience with Entergy and others). But again, the need for an ISO/RTO meeting the Commission's ISO criteria still exists, and the area to be covered must be at

² Constitutional law makes it clear that the resources of the United States are not ordinarily to be expended upon a review of proceedings of this sort where there is no "case or controversy" within the meaning of Article III of the United States Constitution. MEAM and LUS address the issues claimed to be raised by Entergy herein as if this Commission were intending to address them as well. As we note below, however, it would not be appropriate for this Commission to give detailed guidance on this cry for help.

least as large as the markets for generation products. As a practical matter, MEAM and LUS suggest that this means that the ISO/RTO must cover at least the Entergy and SPP area, and preferably more.³ While Entergy makes a great deal out of the number of miles of transmission it owns, the fact remains that this area is not one of high loads, nor are there the large number of owners of generation necessary to create a working market in generation product. Thus a much larger entity is needed to control the transmission resources in the area than appears to be anticipated by Entergy, which almost seems (it is really not possible to tell for sure) to be anticipating an "Entergy plus" transco, essentially comprised of the Entergy transmission resources plus a little more.⁴

If the idea for which Entergy seeks this Commission's imprimatur is that there could, in principle, be an entity created as a transco which might fit some or all of the Commission's ISO principles, and thus take the place of an ISO/RTO to that extent, the answer ought to be "perhaps." This concept is definitely one of those in which "the devil is in the details." Or, more accurately, the devil might be in the details if we only knew what the details were.⁵ MEAM and LUS note that the concept could be either beneficial or very detrimental to the development of a competitive market in the southeast.

³ Entergy has suggested that the remainder of SERC, to which Entergy moved after it declined to join in the attempts to create a single tariff for SPP, will not even move into the 20th century, much less the 21st, unless the Commission blesses this proposal. MEAM and LUS find it hard to believe that the remainder of the SERC could be as enmeshed in counterproductive thinking as Entergy represents, but if it is so enmeshed, the SPP is at least moving toward an ISO to cover that area. LUS, as a member of the AEGIS group, has sponsored a witness in the AEP/CSW merger proceeding, Docket No. EC98-40-000, who testifies that there needs to be, *inter alia*, an ISO/RTO that covers at least the territorial areas of AEP and CSW (ECAR, SPP and ERCOT) before that merger should be permitted to proceed.

⁴ The little more seems remarkably undefined.

⁵ There is so little clarity in the ET proposal that it is difficult to discern whether there are one or more devils in residence among the unspecified conceptual underbrush.

depending on its implementation. On that basis, MEAM and Lafayette do not oppose Entergy's request for guidance, so long as it is clear that the Commission's action in no way binds its future action when and if something real is negotiated and filed. Entergy appears to accept this principle.⁶

With that established, there are some discernable points of Entergy's proposal that may foreshadow problems with the final arrangement. It may be useful to raise those issues here so the Commission can incorporate them in its guidance to Entergy. We suggest that the most that this Commission can say to the ET proposal here is that "perhaps a transco could meet the Commission's standards," but that the Commission should emphasize in that guidance that any future transco filing must adequately resolve the potential problems that are raised in this proceeding in order to gain Commission acceptance if and when such an ET is developed.

B. Specific Issues

Without in any way waiving their right to object to details of such an ET if and when actually developed and filed, MEAM and LUS suggest that there are several categories of issues that are raised by the very concept as proposed by Entergy. We deal with these *seriatim*.

1. Independence and Governance

For example, the issue of independence is a critical one. Indeed, the Commission has addressed the paramount importance of independent ISO governance in numerous

⁶ Filing Letter at 4, fn.4.

orders.⁷ While the proposed method of selecting the transco's governing board may operate properly under certain circumstances, it cannot do so where Entergy would be able to direct the choice of the governing board in the first instance, effectively skewing the process in its own favor and creating at the very least an appearance of bias which could easily deter others from later participation. Participation by other stakeholders at the start-up of any transco is thus critical to its eventual success. MEAM and IUS have not been invited to participate in the development of such a transco. Nor is it apparent to us that any of the other non-IOU transmission owners in the area have been approached. Neither does it appear that any of the other stakeholders who are not transmission owners have been invited to participate. If Entergy is seeking to negotiate solely with other investor-owned transmission providers, leaving all other stakeholders out in the cold, it is not surprising that the other transmission providers have been uninterested in participation in an effort which would ultimately be, and should be, futile. The net result of that sort of approach would be that Entergy would negotiate only with itself, with no one else being interested in putting the necessary time and effort into this exercise in futility.

2. Participation

Unfortunately, the transco structure itself raises roadblocks to participation, early or otherwise. MEAM and Lafayette, as transmission owners, would naturally expect to

⁷ *Atlantic City Electric Co. et al.*, 77 F.E.R.C. ¶ 61,148 at 61,574 (1996), order on reh'g, 77 F.E.R.C. ¶ 61,298 (1997), reh'g denied, *Pennsylvania-New Jersey-Maryland Interconnection et al.*, 81 F.E.R.C. ¶ 61,257 (1998)

participate in any regional transco (assuming that they would be compensated for their transmission facilities on an equitable basis). Lafayette in particular owns a 230 kV interface between the Entergy and CLECO systems. It is by far the largest interconnection between them. Clearly, the participation of LUS would be highly desirable, and even necessary in the long run, at least if CLECO's participation is contemplated. However, Entergy has structured its transco as a for-profit entity, which means that it would be problematic for any municipal or cooperative entity to transfer to it transmission facilities constructed with tax-exempt or RUS financing.⁸ It is far from clear that Entergy's proposed solution (leasing facilities to the transco) will solve the financing problem. When the stakes are the potential loss of tax exemptions for bondholders, municipal entities are highly unlikely to transfer their facilities to the transco if the risk of such enormous potential liability is present. Nor are cooperative entities if the stakes are the loss of tax-exempt status. Without changes in the regulations governing tax-exempt financing, entities using such financing cannot even consider becoming part of a for-profit transco.

3. Compensation

The problem of equitable compensation for transmission facilities alluded to earlier is also not easily resolved, although Entergy provides no clue as to what it has in mind there, aside from a brief comment about avoiding revenue shifting. As the tangled mess of "self-sufficiency" and access charges has shown in California, when entities join

⁸ Indeed, many of the existing ISO's cited this reason for adopting non-profit status.

their transmission assets in an ISO or similar structure, the struggle to come up with just and reasonable rates that adequately compensate all owners can be a difficult one, especially when the process involves equalization of rates between high and low cost providers or shifts in costs (which can be politically unpalatable even where they result from ending subsidies) between classes of customers. Without understanding how transmission owners will be compensated for their transmission assets, it is not likely that many will sign up to be a part of this transco. Nor should they. While this Commission has, in its decision in *Entergy Services, Inc.*, 85 F.E.R.C. ¶ 61,163 (1998), rehearing granted for purposes of reconsideration, held that neither MEAM nor LUS are entitled to transmission credits for their transmission facilities under §30.9 of the network OATT, a principle of “no revenue shifting” will only encourage entities such as Entergy to continue to lean upon the transmission facilities of its TDUs in a manner which is the antithesis of comparability.⁹ Under such circumstances, no TDU would find it worthwhile to be a part of Entergy’s ET with no compensation for their facilities being a part of the grid. Upon the advent of retail competition, such a TDU would expect its own open access tariffs to be used to a much greater degree by suppliers and customers, and thus the revenue recovery would come closer to approximating comparability if it did not become a part of the transco.

⁹ This is one of the issues that are raised in the MEAM and Lafayette application for rehearing in that docket.

4. Independence in Operation

The problem of attracting other transmission owners circles back to the question of independence. An Entergy-only (or even "Entergy-mainly") transco, staffed by former Entergy employees and governed by a board selected by Entergy, is far too likely to serve Entergy's interests, and indeed, seems unlikely to differ greatly from what exists today. It is not clear to MEAM and LUS that any of the stakeholders in the region other than Entergy find the Entergy operation of its transmission system entirely reliable or free from self-serving limitations.¹⁰ Even now, Entergy has recently denied both MEAM and Lafayette requests for transmission capacity this summer for relatively small (15 to 20 MW) transactions, claiming that some or all of the capacity is not available. There is no reason to suppose that an Entergy-only transco will not manipulate claimed Capacity Benefit Margin ("CBM") in the same way Entergy does now.¹¹ The need for a truly regional transmission entity cannot be overstated. The size of the area covered means nothing compared to the number of entities involved. The present structure, vague as it is, offers no clue as to how such participation can be attracted and may well deter it. The Commission's guidance to Entergy should underscore that such participation will be vital to the development of an acceptable transco proposal.

¹⁰ We recognize that Entergy has adopted the Order No. 889 code of conduct and that it has separated its transmission personnel from the physical proximity to its generation personnel that used to be the case. Nor do we in any way suggest impropriety in the case of the Entergy personnel that are delegated to one side or the other of this divide. But there are some very serious structural issues, as discussed below, as well as the fact that all of the Entergy transmission personnel are in fact well aware of the interests of Entergy as a whole, and will be for some time.

¹¹ For examples, see MEAM and Lafayette filings in *Entergy* docket ER98-4410-000.

CONCLUSION

For the reasons set forth above, MEAM and LUS request that the Commission grant their motion to intervene, and any condition any limited action that does not reject the proposal out of hand upon an obligation to meet all of the Commission's ISO standards, and grant other relief that may be just and proper.

Respectfully submitted,



Robert C. McDiarmid

Lisa G. Dowden

Attorneys for the
Lafayette Utilities System and the
Municipal Energy Agency of
Mississippi

Law Offices of:
Spiegel & McDiarmid
1350 New York Avenue, NW
Suite 1100
Washington, DC 20005-4798
(202) 879-4000

May 5, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have on this 5th day of May, 1999, caused the foregoing document to be sent by first class mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.


Lisa G. Dowden

Law Offices of:
Spiegel & McDiarmid
1350 New York Avenue, NW
Suite 1100
Washington, DC 20005-4798
(202) 879-4000

Doc# 109781