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May 5, 1999

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5-11-99

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

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

Dear Mr. Boergers:

Enclosed for filing are the original and fourteen copies of the Motion To Intervene and Comments of Mobil Oil Corporation in the referenced case.

Please time-stamp the extra copy for our files. Thank you for your attention to this matter.

Respectfully submitted,



Jay G. Martin
Kenneth L. Wiseman
Mark F. Sundback

Enclosures

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FEDERAL ENERGY REGULATORY COMMISSION

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Entergy Services, Inc.

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Docket No. EL99-57-000

**MOTION TO INTERVENE AND
COMMENTS OF MOBIL OIL CORPORATION**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §385.214, and the Commission's Notice dated April 7, 1999, Mobil Oil Corporation ("Mobil") hereby moves to intervene as a party in the captioned proceeding and submits comments concerning the Petition of Entergy Services, Inc.,¹ filed on behalf of the Entergy Operating Companies (collectively, "Entergy"). The Petition seeks a declaratory order providing guidance on elements of a proposal to create a "Transco" that would control and operate Entergy's transmission system, as well as the transmission assets of any other entities that might elect to become members of the Transco.

I.

The following persons should be included on the Commission's official service list in this proceeding, and all communications concerning this motion should be addressed to:

¹ "Petition of Entergy Services, Inc. for Declaratory Order Regarding Compliance with Applicable ISO Principles," filed April 5, 1999.

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II.

Mobil is a corporation organized under the laws of the State of New York, with principal places of business in Fairfax, Virginia and Dallas, Texas. Mobil is engaged, *inter alia*, in the exploration, production and refining of crude oil and also operates a world-scale chemical business. Through its subsidiaries, Mobil owns and operates a 335,000 barrel per day capacity crude oil refinery, a blending and packaging plant, a polyethylene plant, an olefins and aromatics plant and a chemical specialty plant, all located in Beaumont, Texas. Mobil's Beaumont facilities all receive electric service from, and thus are direct end-use customers of, Entergy Gulf States, Inc. ("Entergy Gulf States"), one of the Entergy Operating Companies.

Entergy's Petition contemplates that Entergy Gulf States will contribute transmission facilities to the Transco. Resolution of the issues raised by the Petition thus will have a direct impact on the electric services received, and potentially the rates paid, by Mobil's Beaumont facilities. Mobil therefore has interests which will be affected by the outcome of this proceeding which cannot be represented adequately by any other party. Accordingly, Mobil is an interested party within the

meaning of Section 308(a) of the Federal Power Act and Commission Rule 214, and Mobil's interest is of such a nature that its participation will be in the public interest.

III.

Entergy states that one of the reasons for its request for a declaratory order is that without regulatory certainty, other owners of transmission facilities are reluctant to commit their time and resources to participating with Entergy in developing a Transco structure or in negotiating the agreements and tariffs needed to place a regional transmission organization ("RTO") into service. Petition at 2-3. Entergy avers that a Commission order providing guidance will encourage other transmission-owning entities to join the Transco. *Id.* at 3.

Mobil would welcome the creation and operation of a truly independent operator of transmission facilities across the widest possible region. Thus, Mobil is highly supportive of a goal of forming an RTO which will foster transmission access to multiple sources of generation, thus promoting (particularly in conjunction with state initiatives to provide retail competition) an open, competitive market for power. Of course, to foster transmission access and provide for true competition, it is mandatory that transmission be provided on an open-access, non-discriminatory basis.

It is intuitive that greater transmission access contemplates broad participation by multiple transmission-owning entities, not just the Entergy Operating Companies. Thus, a declaratory order promoting the participation of other transmission-owning entities to join with Entergy in forming an RTO, maximizing open-access, non-discriminatory transmission and promoting true competition, is a result that Mobil embraces. At the same time, Mobil is concerned that the Commission not issue an order that, perhaps unintentionally, could have the opposite effect, *i.e.*, the Commission should

not issue definitive rulings in the context of the vague nature of Entergy's filing that might influence transmission-owning entities other than Entergy to decline to participate in an RTO. Moreover, given the critical nature of Entergy's proposal, not only from the perspective of market participants in the Entergy service territory but also from the perspective of the precedential effect of any Transco proposal, it is important to have a fleshed-out proposal that allows the Commission to determine with confidence that its decision does not have the unintended effect of restricting or distorting real competition. With those latter concerns in mind, Mobil offers the following comments regarding Entergy's Petition.

A. Governance Structure

Entergy proposes that the Commission approve what Entergy labels as an "independent" board, rather than the "stakeholder board model" to manage the Transco. Petition at 21. Entergy's primary proposal is that "Member Companies," *i.e.*, transmission-owning entities that join the Transco, select the board members. Petition at 11. As a fall back position, Entergy states 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." *Id.* (Emphasis added).

In Order Nos. 888 and 888-A, the Commission adopted eleven principles for evaluating proposals to establish independent operator ("ISO") systems. Principle No. 1 is that governance of the ISO should be structured in a fair and nondiscriminatory manner. In adopting that principle, the Commission stated that an ISO should be independent of any individual market participant or any class of participants. FERC Stats. & Regs. ¶ 31,036 at 31,730 (1996). It went on to explain that a governance structure that includes fair representation of all types of users of the system would help

ensure fair, non-discriminatory operation of the system. *Id.* at 31,730-31. Thus, the Commission emphasized that ISO rules of governance “should prevent control, and appearance of control, of decision-making by any class of participants.” *Id.* at 31,731.

Consistent with the Commission’s discussion of Principle No. 1, the Commission repeatedly has rejected proposed ISO governance structures that would confer excessive voting power upon incumbent vertically integrated utilities. *See, e.g., New England Power Pool (“NEPOOL”),* 86 FERC ¶61,262 at 61,965 (1999) (rejecting NEPOOL’s argument that “sector voting” was inappropriate for NEPOOL); *Central Hudson Gas & Electric Corp. (“New York ISO”),* 87 FERC ¶ 61,135 (April 30, 1999), *mimeo* at 13-14; *see also Midwest Independent Transmission System Operator, Inc.,* 84 FERC ¶ 61,231 at 62,151 (1998). Rejection of such structures is consistent with the policy the Commission enunciated with respect to the California ISO that:

[T]he voting structure should be guided by two overriding principles: (1) no one class should be able to block or veto action; and (2) no two classes should be able to form a sufficient majority to make decisions.

Pacific Gas & Electric Co., 77 FERC ¶ 61,204 at 61,817(1996), *order on reh’g,* 81 FERC ¶ 61,122 (1997).

Entergy claims that its proposal is consistent with the independent board approach the Commission allegedly accepted with respect to the NEPOOL ISO, the New York ISO and the Midwest ISO. Petition at 21-22. Entergy relies upon the Commission’s decisions in *New England Power Pool,* 79 FERC ¶ 61,374 at 62,584-85 (1997), *Central Hudson Gas & Electric Corp.,* 83 FERC ¶ 61,352 at 62,409 (1998) and *Midwest Independent Transmission System Operator,* 84 FERC at 62,147 for that proposition. However, while it is correct that in each of those instances, the Commission approved proposals that contemplated, as here, the engagement of independent search

firms to identify qualified candidates to serve as members of independent boards, in each instance, the governance structure also expressly provided voting rights to, and participation by, representatives of each sector of the electric market in management of the ISO. Even then, the Commission rejected the elements of the governance structures that provided excessive voting power to the incumbent vertically integrated utilities that were participating in each of the ISOs. *New England Power Pool*, 83 FERC ¶ 61,045 at 61,260-61 (1998); *New England Power Pool*, 86 FERC at 61,965; *Central Hudson Gas & Electric*, 83 FERC at 62,409; *Central Hudson Gas & Electric*, 87 FERC ¶ 61,135, *mimeo* at 11-14; *Midwest Independent Transmission System Operator*, 84 FERC at 62,149.

In contrast to the governance structures proposed for the NEPOOL, New York and Midwest ISOs, Entergy's primary proposal would not provide any class of market participants (other than transmission-owning entities that become Member Companies) any vote at all in the management of the Transco. And, even Entergy's carefully worded fall back position concerning final selection of the board does not expressly state that any sector of the market (again other than transmission-owning entities that become Member Companies) would have any representation or role in managing the Transco. Thus, Mobil urges the Commission to make clear that broad, representative voting rights for an array of market participants in governance matters will be the rule, consistent with that which the Commission has required of the NEPOOL, New York and Mid-West ISOs (among others).

B. Cost Shifting Among Member Companies

Entergy states that a concern of transmission owners is that the rate methodology adopted for the Transco should not result in cost shifting among the transmission owners that join the

Transco. Petition at 28. While Entergy does not set forth a specific rate proposal, it appears to suggest that cost-shifting could result if the cost of Member Companies' transmission assets are combined for ratemaking purposes resulting in a single, grid-wide rate that averages the cost of transmission across the Transco. *Id.* at 27.

Mobil agrees that an election of a transmission-owning entity to join the Transco should not result in cost-shifting or unwarranted subsidies in terms of revenue allocation to transmission owners. However, the design of the correct rate methodology for the Transco is independent of the issue of allocating revenues to Member Companies. Thus, in addressing the cost-shifting issue in the context of revenue allocation among transmission owners, the Commission should not impose any restrictions on rate methodologies. In fact, the Commission should refrain from issuing definitive rulings on specific rate methodologies until such time as the Transco (under the direction of truly independent management), rather than Entergy, places a rate proposal before the Commission. Accordingly, at this time, maximum rate flexibility should be maintained, particularly so that rates might be designed in a manner that (in conjunction with savings achieved through economies of scale) would result in lower transmission rates for all users of the system. The goal of attempting to achieve such rate reductions noticeably is absent from Entergy's proposal.

C. Market Monitoring Unit

Entergy proposes to establish a market monitoring unit. A careful reading of Entergy's Petition at page 14, as well as Appendix 3 to the Petition, shows that the objectives and responsibilities of the unit, as proposed by Entergy, would be very limited. As proposed, the unit essentially would be responsible only for three activities: (1) monitoring compliance with the Transco's rules and procedures established in its manual, tariff and operating agreements; (2)

determining design flaws in the operating rules under the tariff and other operative documents; and (3) collecting information and issuing reports regarding the foregoing activities, i.e., regarding compliance with the tariff and design flaws in the operating rules. Nowhere does Entergy propose that the market monitoring unit would monitor market activity for purposes of determining whether a market participant (including, in particular, an affiliate of a Member Company) is engaging in activities that distort competition or otherwise interfere with the efficient operation of the market.

In addressing market monitoring, for example, with respect to the California and NEPOOL ISOs, the Commission has made clear that it requires market surveillance activities well in excess of those proposed here by Entergy. For instance, the California ISO proposed a monitoring plan that would identify, *inter alia*: (1) anomalous market behavior; (2) attempts to create transmission constraints to exclude competitors; (3) behavior other than through market power that was designed to undermine the efficiency of the market; and (4) bidding strategies that reflected the withholding of capacity or predatory pricing. *Pacific Gas & Electric Co.*, 81 FERC ¶ 61,122 at 61,549 (1997). As part of its proposal, the California ISO indicated it would focus on day-to-day activities rather than “macro-structural” issues. *Id.* While the Commission approved the monitoring plan, it nonetheless made clear that it expected the California ISO market monitoring unit to examine “macro-structural” issues as well in order that the Commission could be apprised of “any observed pattern of market power abuse” *Id.* at 61,552. Similarly, in the case of the NEPOOL ISO, the Commission found that NEPOOL’s proposed plan did not include monitoring for design flaws in the market. *New England Power Pool*, 85 FERC ¶ 61,379 at 62,480 (1998). Thus, the Commission required NEPOOL to modify its market surveillance plan “to specifically include a provision to

monitor and evaluate any forms of anomalous market behavior and determine whether they can be corrected by market design changes.” *Id.*

Entergy, the owner of a disproportionate share of generation capacity, as well as transmission facilities, in the region initially to be involved in this proposal, should be directed to file an effective market monitoring plan, consistent with the responsibilities imposed upon similar units in other RTOs. Moreover, the mere five-year life proposed for the monitoring unit raises an additional concern. *See* Petition at 14. Without a showing that the market is operating in an open, competitive fashion, there is no reason to disband the monitoring unit. Therefore, Entergy should be directed to file a plan that contemplates ongoing responsibilities for the market monitoring unit. The unit should remain in operation until such time as there is a showing that an effectively competitive market exists such that the likelihood of potential manipulation is diminished sufficiently to warrant dissolution of the unit.

D. Transco versus ISO

At this juncture, Mobil expresses no position with respect to the question of whether a Transco, in contrast to an ISO, can constitute a legitimate RTO that will function consistent with the eleven principles the Commission set forth in Order No. 888. Thus, particularly given the present undefined nature of Entergy’s proposal, Mobil neither supports nor opposes the Transco proposal as such. Rather, Mobil reiterates that it is fully supportive of efforts to form an RTO which will provide broad transmission access to multiple sources of generation, thus promoting an open, competitive market for power. Consistent with that goal, Mobil submits that the end-result of Entergy’s filing should be Commission action that will promote participation by non-Entergy

transmission-owning entities, along with Entergy, in a broad-based RTO that satisfies the eleven principles the Commission enunciated in Order No. 888.

IV.

WHEREFORE, Mobil respectfully requests that it be permitted to intervene in this proceeding with full rights attendant with party status.

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