

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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FEDERAL ENERGY REGULATORY COMMISSION

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

**MOTION TO INTERVENE AND PROTEST OF
SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION**

South Mississippi Electric Power Association
("SMEPA") by and through counsel, Robert Weinberg and Tanja
M. Shonkwiler, Duncan, Weinberg, Genzer & Pembroke, P.C.,
1615 M Street, N.W., Suite 800, Washington, D.C. 20036,
files this Motion to Intervene and Protest in the above-
referenced docket, and states as follows:

PRELIMINARY STATEMENT

1. On April 7, 1999, the Commission gave notice that on April 5, 1999, Entergy Services Inc. ("ESI" or "Entergy"), tendered for filing a Petition for Declaratory Order Regarding Compliance of Transco Proposal With Applicable ISO Principles. The Notice added that the Petition asks the Commission to issue an order declaring that the plan to create a "Transco," an independent, regional transmission company that will operate the transmission system of Entergy and other transmission-owning companies is consistent with the relevant ISO principles established by the Commission in Order No. 888, and its progeny, especially those involving independence, governance

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and conflicts of interest. In addition the Notice stated that Entergy requests that the Commission issue the requested declaratory relief before the end of July 1999.

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2. The Notice indicated that any person desiring to be heard or to protest Entergy's filing should file a motion to intervene or protest on or before May 5, 1999.

3. This Motion to Intervene and Protest is timely filed pursuant to such Notice and Sections 203, 205 and 206 of the Federal Power Act ("FPA"), Rules 207, 211, 212 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.207, 385.211, 385.212, and 385.214 (1998).

4. The names and addresses of the persons upon whom service of pleadings, documents or communications in this proceeding should be made, are designated as follows, in accordance with Rule 203, 18 C.F.R. § 385.203 (1998):

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Manager of Corporate Planning
and Operations
South Mississippi Electric
Power Association
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Compton, Crowell and Hewitt
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Biloxi, Mississippi 39533-1937
601-374-4940
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SMEPA further requests that a courtesy copy of all pleadings, documents or communications be sent to the following person:

Stephen Page Daniel
GDS Associates, Inc.
Suite 720
1850 Parkway Place
Marietta, GA 30067
770-425-8100
FAX 770-426-0303
E-mail steved@gdsassoc.com

BACKGROUND

5. SMEPA is an incorporated, non-profit cooperative electric power association, organized and operating under and pursuant to Chapter 184, Mississippi Laws of 1936, as amended; Section 5463, et seq., Vol. 4A Recompiled, Mississippi Code of 1942, and is a public utility under the laws of the State of Mississippi.

SMEPA is owned and controlled by its members which are distribution rural electric power associations, serving rural areas in Mississippi at retail. The loads served by SMEPA's member distribution cooperatives are predominantly domestic and include substantial farm loads.

6. ESI is an affiliated company of Entergy Corporation, an investor-owned registered public utility holding company, and acts as a service agent for its affiliated companies, which, *inter alia*, generate, transmit, distribute and sell electric power and energy at wholesale and retail.

7. SMEPA currently receives transmission service from Entergy Mississippi (formerly known as Mississippi Power & Light Company) pursuant to an interconnection agreement between Mississippi Power & Light Company and South Mississippi Electric Power Association dated July 18, 1979, as amended. The Interconnection Agreement also includes rate schedules for the provision of maintenance service, emergency service, replacement energy, and economy energy. In addition, SMEPA currently receives 75 MW of transmission service pursuant to Entergy's open access transmission tariff ("OATT").

MOTION TO INTERVENE

8. Entergy is seeking guidance from the Commission with regard to the potential establishment of a

Transco, which it describes as ". . . an independent, incentive-driven transmission company that will control and operate Entergy's transmission system and the transmission system assets of the entities that will become members of the Transco." Petition at 1. SMEPA is potentially affected by the establishment of a Transco in a number of material respects. First, SMEPA operates its own load control area and transmission system which is directly interconnected with Entergy. Second, SMEPA relies upon Entergy for transmission services to deliver power and energy from certain SMEPA resources to the portion of its load served directly from Entergy's transmission system. SMEPA is a party to several transmission arrangements between it and Entergy, whereby these historical transmission relationships between the parties are established. Third, SMEPA has an interest in regional transmission organizations ("RTOs"), e.g., an independent system operator ("ISO"), transco, or other truly independent transmission grid owner and/or operator, both as a potential user of the transmission facilities of any such RTO and as a potential member of such RTO.

9. As shown above, SMEPA has an interest in this proceeding. SMEPA's participation is necessary and appropriate to the administration of the FPA, and will be in the public interest. SMEPA's interests may be directly

affected by the outcome of this proceeding, and will not be adequately represented by any other party. SMEPA, therefore, requests that the Commission grant SMEPA's intervention, and make it a party to this proceeding for all purposes.

PROTEST

10. SMEPA protests Entergy's filing because the proposal contained therein does not comply with Commission precedent, and may result in rates and other terms and conditions of transmission which may be excessive, unjust and unreasonable and unduly discriminatory under the FPA.

A. Entergy's Petition for a Declaratory Order Must be Denied as Hypothetical.

11. A pervasive problem infecting virtually the entire Entergy Petition is its almost breathtaking vagueness. On point after point, the Petition argues that Entergy's Transco proposal meets Commission precedent, particularly the ISO principles, simply because Entergy promises that missing aspects will be supplied in accord with such precedent or that portions of the proposal which may be found to violate the ISO principles will be changed. Given all these pledges of future compliance, Entergy seeks to lower the declaratory order process to that of tautology. It seeks an order that its proposal is consistent with the Commission's ISO principles on the strength of its assurance that the proposal will later be completed and altered where

necessary to meet the ISO principles. Significantly, it is not seeking an order that its proposal, as it now stands, complies with applicable precedent.

12. Entergy presents the Commission with a classic "chicken and egg" dilemma by couching its filing as seeking a declaratory order that would provide the Commission's *imprimatur* to what can at most be charitably described as a concept in the early developmental stages. Entergy's filing clearly is not a final product (as will be discussed in more detail below), many important aspects of its proposal (not merely details) are left blank, it is subject to change by Entergy before filing, and it is subject to change as a result of negotiations among Entergy and other possible participants. Entergy claims that "[w]ithout the regulatory certainty such a declaratory order will bring, other transmission owners have been reluctant to commit their time and resources to participating in developing a Transco structure and negotiating the myriad of agreements, contracts and tariffs needed to put such a regional transmission organization into service." *Id.* at 2. However, Entergy's proposal is so vague that even approval of it would bring no certainty. In essence, Entergy has only conceived of the glimmer of an idea for a Transco proposal which it admits on the face of its application is subject to change before filing for formal

approval by the Commission pursuant to Sections 203 and 205 of the FPA.

13. Entergy is asking the Commission to bless a concept that is likely to change before it is formally submitted for approval by the Commission. Entergy is seeking guidance from the Commission indicating that its Transco proposal is consistent with all relevant ISO principles,¹ notwithstanding the fact that the contents of this proposal will almost certainly change radically before formal submittal for approval. SNEPA acknowledges the desirability of RTOs and strongly supports Commission approval of RTOs that are truly regional in nature and independent of the influence of the historical transmission owners of the facilities dedicated to such RTOs. Notwithstanding, Entergy's Petition is grossly premature because it asks the Commission to render an opinion regarding a moving target. This is an abuse of the declaratory order processes of the Commission as discussed below; therefore, the Commission should deny the Petition.

¹ *Promoting Wholesale Competition Through Open Access Non Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,730-32 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997).

14. While SNEPA is sympathetic to the expressed concern of Entergy that it may have had difficulty soliciting partners in the Transco proposal, that is no reason to waste the time and resources of the Commission without any assurance that any transco proposal ultimately filed by Entergy and possibly some other systems will look even remotely like the Transco proposal "trial balloon" floated here. Entergy acknowledges that effectuation of a transco will require negotiating myriad agreements, contracts, and tariffs to put such an RTO into service. None of this has been done yet. The draft Limited Liability Company Agreement ("LLC Agreement") (Petition, Appendix 2) is subject to negotiation along with all these other implementing arrangements. The limited package of material submitted by Entergy, upon which it expects the Commission to provide "guidance," is woefully inadequate to reach any conclusions as to whether a later submittal by Entergy (and possibly others) would be acceptable to the Commission, including satisfaction of the 11 ISO principles.

15. The tentativeness of the Transco proposal is fully revealed in Footnote One of the LLC Agreement, the one document that provides any insight into what the future Transco may look like. Footnote One makes clear that the LLC Agreement is only being provided for "informational purposes only" and will merely be "a starting point for

negotiations with other potential members." Thus, this proposal is so qualified as to be meaningless from the standpoint of the Commission rendering guidance through a declaratory order. Even if the Commission were to conclude that certain elements of the proposed Transco are acceptable (or acceptable with certain changes), there is no assurance that other changes will not be made that render such declaratory order useless and requiring the process to start over when a complete package acceptable to the signatories is filed for approval. The process and status of the proposed Transco is so amorphous that the only logical step for the Commission to take is to deny the request for declaratory order as not being ripe for a determination. This would in no way prejudice submittal of the proposed Transco in a more fully developed form, or some other form of RTO with all the details filled in, when Entergy (and possibly others) is (or are) ready to put forward a definitive plan for consideration.

16. What Entergy has failed to put forward are specific proposals for most of the elements of its desired Transco that can be judged against the Commission's ISO principles. For example, Entergy's Petition contains neither tariffs nor rates. While Entergy treats these as mere "details" (Petition at 26), in the absence of these "details" the Commission cannot reach an reasoned

determination regarding Entergy's compliance with the ISO principles. Indeed, without such "details" there is nothing which can be said to comply with the ISO principles.

17. On several of the ISO principles, Entergy does nothing other than state that it will comply with the principle, without providing the Commission any evidence that it can or will do so. Entergy's failure to present any evidence in support of its position makes it impossible for the Commission to reach a reasoned decision on this matter.

18. For example, regarding the Commission's Principle No. 7, namely that the ISO have incentives for efficient management, Entergy does nothing other than restate the principle. Petition at 32.² Further, while acknowledging Principle No. 6, and the "important" goal of allocating scarce capacity, Entergy concedes that it has failed to develop a "specific congestion management proposal" and merely states that it will develop such a proposal and that "long-term solutions to constraints can be resolved through the annual Regional Planning Summit Process." Petition at 31-32. Neither of these proposals offers any specifics on which the Commission can make a

² In fact, Entergy immediately disregards the only commitment that Entergy even attempts to make, namely that it will purchase services from the Member Companies in an open and competitive market, by noting that the Transco will receive accounting, tax and financial services from the Entergy Operating Companies or other Entergy subsidiaries. Petition at 32, n.25.

decision and instead leaves the Commission dependent on nothing other than Entergy's unsupported statements that it will comply with the principles.

19. Moreover, for the few express elements that are contained in the Petition there is no support offered other than mere *ipse dixit*. Thus, the Petition proposes performance based rate making ("PBR"), and asserts that such rates "will incent [sic] the Transco to maximize throughput, relieve congestion, and enhance reliability." Petition at 33. These are grand claims, but the Petition is devoid of any support for them. How such PBR rates would work or what they would be like is nowhere stated. Entergy has provided no testimony (expert or other) which explains how PBR rates, a major departure from the Commission's historical reliance on cost-based rates for transmission, either would or could be just and reasonable. If anything, this novel approach should require more supporting evidence than traditional methodologies, yet Entergy offers none.³

20. The Commission's long-standing policy has been to deny petitions for declaratory orders when a petition raised hypothetical issues or failed to provide sufficient certainty. This case rests almost entirely on hypotheticals or theories and presents numerous and

³ The same is true for Entergy's proposal that the Transco be a for-profit entity. Again, no evidentiary support is offered.

significant areas of uncertainty. Based on Commission precedent, the Commission should deny Entergy's Petition.

21. The Commission, in cases which provided substantially more certainty than this case, has concluded that issuing a declaratory order would be inappropriate. In *Interstate Natural Gas Association of America*, 18 FERC ¶ 61,170 (1982) ("INGAA"), for example, the Commission, in response to INGAA's request for a declaratory order, addressed whether certain types of exchanges of natural gas were exempt from Commission jurisdiction. The Commission first noted that a declaratory order

will only issue from the Commission if, in its opinion, the order will terminate an actual controversy or remove uncertainty with respect to a specific matter capable of resolution through the declaratory order procedure. Conversely, the Commission has refused to utilize the declaratory order procedure where, as here, the uncertainty is based upon the assumption of hypothetical facts which are not actually extant and therefore, not susceptible of resolution through the issuance of a declaratory order.

INGAA, 18 FERC at 61,337.

22. The Commission went on to deny INGAA's Petition, stating that the case

should be decided on the basis of the concrete facts and circumstances of each exchange, and not on principles formulated in advance which are based on the assumption of hypothetical facts. To do otherwise would result in an exercise in speculation which would

remove little uncertainty from these transactions. Even if we were to grant INGAA's Petition as requested, the questions left unanswered would be myriad.

Id.

23. In numerous other cases, the Commission has found that petitions for a declaratory order have raised issues that are too speculative, uncertain or hypothetical for an order to issue. *Associated Oil & Gas Co.*, 20 FPC 788 (1958) (A declaratory petition seeking advice on establishing just and reasonable rates does not "warrant the issuance of a declaratory order. . . . [s]uch procedure was not designed to permit a petitioner to seek an administrative declaration as to . . . the nature and extent of the evidence [that] should be [presented] to secure the requested relief."); *Turlock Irrigation District v. Pacific Gas and Electric Company*, 64 FERC 61,183 at 62,544 ([W]e see no adequate reason now to consider initiating a proceeding and holding a hearing on rate methodology to resolve issues which appear to be more appropriate for resolution in the concrete setting of a rate filing - which PG&E indicates that it will be making" later in the year), *reh'g denied*, 65 FERC ¶ 61,016 (1993); *Camille E. Held*, 57 FERC ¶ 61,080, 61,293 (1991) ("The petition before us does not present sufficient facts on which to formulate a legal determination, and the controversy alleged is purely speculative"); *Minnesota Power*

& Light Co. and Northern States Power Co., 43 FERC ¶ 61,104, 61,343 (Declaratory petition regarding prudence determination in advance of a transaction's completion denied because it "risk[s] that the Commission will become involved in day-to-day utility management decisions") *reh'g denied*, 43 FERC ¶ 61,502 (1988); *The Cities of Lafayette and Plaquemines, Louisiana v. Gulf States Utilities Co.*, 47 FPC 62, 63 (In a case raising issues regarding the jurisdictional nature of Dow Chemical Corporation pursuant to a pooling agreement, where the pooling agreement allowed for future changes, the Commission stated that "an immediate proceeding initiated for the purpose of declaring Dow a 'public utility' would be a misapplication and wasteful use of the resources of this Commission. We decline to engage in such hypothetical activities which offer a substantial likelihood of becoming academic . . .") *reh'g denied*, 47 FPC 692 (1972); *Dominion Resources, Inc.*, 85 FERC ¶ 61,069, 61,268 (1998) (Petition for declaratory order denied because "Dominion has asked us to put a stamp of approval on transmission pricing policies that are proffered in the abstract."); *PPG Industries, Inc.*, 53 FPC 1517 (1975) ("The Commission offers declaratory relief to settle specific controversies not to answer hypothetical questions of the sort presented by the instant petition.")

24. Finally, while the only cases Entergy cites in defense of the vagueness of its Petition are the Commission's other ISO cases, in each of those cases the Petitioner(s) supplied substantially more detail regarding the proposal than Entergy is providing in this case. Entergy cannot use those cases to support its vague and almost entirely hypothetical proposal.

25. Each of the other cases cited by Entergy was supported by multiple parties and was the result of a lengthy development process. In contrast, Entergy is proffering a proposal that has only its support and then only conditionally, in the sense that Entergy itself only describes its proposal as "illustrative" and for "informational purposes" and makes clear that it reserves the right to change virtually all aspects of the proposal.

26. The other ISO proposals discussed by Entergy contain dramatically more substance than this proposal and therefore cannot serve as precedent for the Commission approving this proposal. For example, in the California ISO, *Pacific Gas and Electric Co.*, 77 FERC ¶ 61,204 (1996), cited by Entergy as support of its Petition, the Petitioners provided numerous and specific details in support of their petition, including, a description of the facilities being transferred (*id.* at 61,795), usage charges and congestion contracts (*id.* at 61,800-02), specifics on scheduling,

control area operations, settlement and billing, transmission access and pricing (*id.* at 61,798-99) and specifics on governance, class structures, capital contributions and conflict of interest standards. *Id.* at 61,796-98.

27. Similarly, the PJM ISO, *Atlantic City Electric Co.*, 77 FERC ¶ 61,148 (1996), contained five specific agreements regarding the ISO. The agreements included criteria for membership, a listing of services that the ISO would provide, the establishment of an administrative committee, and governance principles. *Id.* at 61,560-61,561. The ISO Agreement delineated the role of the ISO, limited its operational control of the system and set out additional duties such as administering the tariff, coordinating transmission planning and performing administrative support (*id.* at 61,562), and set out the rights of the owners and procedures for dispute resolution. *Id.* at 61,563.

28. In contrast, Entergy's proposal, as discussed in more detail above, contains virtually nothing regarding numerous aspects of the ISO principles, contains no tariffs or rates, and even in those limited areas where Entergy appears to provide specifics, Entergy maintains the right to change them.

29. Further, because Entergy's Petition presents several novel issues, including a for-profit ISO and PBR ratemaking, there is all the more need for Entergy to provide the full specifics of and support for its proposal so that the Commission can evaluate these novel theories in light of the full facts. Despite this, Entergy has declined to provide anything even approaching the amount of information in the other ISO filings. For this additional reason, the Commission should deny Entergy's Petition.

30. This case presents numerous uncertainties with regard to the Entergy Transco, uncertainties that are much more significant than those in the cases discussed above. Here, Entergy's proposal is entirely built on hypotheticals. For example, unlike in *INGAA*, where only certain terms had been left undefined in the Petition, Entergy's Petition fails even to establish a framework, let alone language for, a specific proposal. As such, Entergy leaves the Commission to guess at entire parts of its proposal and not merely at specific terms. Entergy's petition is much like that of Dominion Resources in that it seeks advance Commission approval of a theoretical concept, and like Dominion Resources' it should be denied. 85 FERC ¶ 61,069. Further, even on those issues where Entergy purports to provide specifics, it reserves the right to make changes, thereby making abundantly clear that its proposal

is nothing more than a mere place-holder. The Commission, pursuant to its long-standing precedent, should deny Entergy's Petition and avoid expending its resources, and those of the other parties in this case, on what, at its most basic, is nothing more than a hypothetical scenario.

B. Entergy's Petition Fails to Reconcile the Fiduciary Obligations of Board Members to Owners and Affiliate Independence.

31. Entergy proposes that the Transco be managed by a board of directors. The Transco is to be a for-profit entity, with the profits and losses being allocated among the "Members" (i.e., owners) (LLC Agreement, Section 4.1, p. 8). Entergy claims that ". . . the Transco proposal adopts the 'independent' board, rather than the 'stakeholder' board model". Petition at 21. Entergy goes on to suggest that the "Member Companies . . . will be passive members of the Transco and will have their limited voting rights spelled out explicitly in the LLC Agreement" (*id.* at 22-23), but acknowledges that ". . . the Transco could technically be an affiliate of the Member Companies". *Id.* at 23. Entergy also suggests that ". . . the Member Companies will not exercise control over the operation or management decisions of the regional transmission company", but ". . . will hold a passive economic interest in the Transco . . ." *Id.*

32. Whether the Transco governance structure provides for truly independent operation and management is

discussed in more detail below. What Entergy wholly fails to address, however, is how the fiduciary obligations of a board (e.g., the Transco Board) to its owners (in this case the Transco Members) can be exercised in the interest of the owners without compromising the independence of the Board with regard to the actions of the entity (in this case the limited liability corporation). It is very logical to assume that the exercise of true independent operational and management responsibility for the Transco might result in decisions that are suboptimal with regard to the interests of the Members of the Transco. It is far from clear what exposure the Members have to such actions and to what extent they can and will hold the Board responsible for failure to operate and manage the Transco consistent with the Board's fiduciary obligations. Conversely, Entergy does not explain what mechanisms are proposed to insulate the Board from their fiduciary obligations to the Members so as to remove the incentive for the Board to make decisions for the benefit of those Members. These are serious questions of governance that have not been addressed in the Petition.

C. Entergy's Petition Otherwise Fails to Meet the Requirement of Independence.

33. Given the amorphous nature of the Transco proposal now before the Commission, it is impossible for the Commission to make any determination that true independence will exist. However, to the extent that the Petition

provides any insight as to this central issue, the Petition speaks out of both sides of its mouth. On the one hand, Entergy states that the Transco has incentives "to minimize costs, maximize throughput, achieve efficient levels of congestion and reliability, and expand the transmission grid when economically justified." Petition at 17. On the other hand, Entergy simplistically concludes that an "incentive-driven" Transco will have no financial ties with its passive investor Member Companies. Petition at 20-24.

34. Entergy cannot however blithely ignore the economic connection between the Transco and the Member Companies, *i.e.*, the only reason that the Transco desires to maximize profits and minimize costs is to improve the profits of its Members. As such, the financial interests of the Transco and its Board are identical with the interests of its Members since the goal of both is to maximize profits of the Members. Entergy cannot, on the one hand, acknowledge that the Transco is profit-motivated without acknowledging what that means, namely that the financial interests of the Transco and its Board are aligned with the financial interests of its Members.

35. Further, on numerous points regarding the independence principle, Entergy fails to provide virtually any concrete specifics regarding how the Transco will maintain its independence. For example, while Entergy

attaches a Limited Liability Company Agreement to its Petition, it makes clear that the Agreement is only "illustrative", states that the Agreement is only for "informational purposes" and maintains the right to submit an entirely different agreement as part of its Section 203 and/or Section 205 filing. Petition at 10; Petition at 6, n.6 (Entergy reserves the right to propose "alternative structures") LLC Agreement, n.1 (Appendix 2).

36. Even on the specific issues that Entergy elects to address under the independence principle, it continues to make clear that it reserves the right to adopt completely different proposals. For example, while the Petition states that Entergy is proposing an independent board format, it also states that Entergy would be prepared to utilize a stakeholder committee. Petition at 11-12, n.11. Similarly, while Entergy states that "[a]ll Member Companies will be allocated an interest in the Transco on similar terms" it provides virtually no guidance on how this will be achieved, leaving itself the flexibility to change its proposal in the future. Petition at 6.

37. The structural model proposed by Entergy on its face raises serious doubts as to the true independence of the Transco from Member influence. The obvious fiduciary obligation of the Board to the Members, discussed above, raises a threshold issue regarding independence. Closer

scrutiny of various provisions of the so-called "illustrative" or "informational" LLC Agreement demonstrates an insufficient distancing of the Transco and its Board from the Members.

38. First, by a Majority Vote of the Members the Members select a nationally-recognized executive search firm to select a slate of candidates for each Board position. LLC Agreement, Exhibit 2. A "Majority Vote" presumably is a reference to the "Majority of the Members" as defined in the LLC Agreement. Schedule A at A-3. The Majority of the Members is determined by aggregate "Percentage Interests" which in turn are a reflection of the Members' relative ownership interests. While not at all clear, the LLC Agreement appears to establish that such Percentage Interests will be based upon Capital Contributions, which apparently will be primarily, but not totally, transmission assets. Hence, given the size of Entergy, it is likely to have a majority ownership interest (and even a Super Majority under certain circumstances) even if there were a large number of smaller entities which contributed their transmission assets to the Transco. Obviously, the level of control or independence will depend upon the size of the participants in the Transco. Likewise, the degree of independence of the Board selection process will depend upon the size of the participants.

39. The Board selection process calls for the Members or a committee of Market Participants to elect Directors from the slate of directors proposed by the nationally-recognized search firm. The Board selection process is unclear as to how the Members will vote on the slate of Directors. If it is by "Majority Vote" of the Members, again, a participant, such as Entergy, which had a majority of the Percentage Interests could control the selection process, thereby exerting undue influence in the determination of the Board and, consequently, how the Transco might be managed.

40. Second, the Members must authorize capital contributions under certain circumstances (LLC Agreement, Section 5.11(b)(1x)) and to admit Persons as additional Members under certain circumstances. *Id.* at Section 5.11(b)(x). An entity with a majority Percentage Interest effectively can control those capital contributions and additional memberships, both of which could be critical to the level of independence and effectiveness of the Transco.

D. Entergy's Proposed Transco Must not Abrogate Pre-Existing Contractual Rights.

41. As discussed in more detail above, SMEPA currently receives transmission service from Entergy Mississippi pursuant to an interconnection agreement between Entergy Mississippi and SMEPA, dated July 18, 1979, as amended.

42. Among numerous other issues, Entergy's Petition also fails to address the continued effectiveness of agreements such as the one between SMEPA and Entergy Mississippi, which agreements would predate any Transco. Because the Entergy Mississippi and SMEPA agreement is a contract between the parties and a FERC filed rate, the creation of a Transco cannot and should not abrogate the rights set out in the agreement. See generally PJM Interconnection, 81 FERC ¶ 61,257, 62,280-81 (1997). At minimum, Entergy's proposal must clarify that its Transco proposal will maintain the status and priority accorded this and other similar agreements.

CONCLUSION

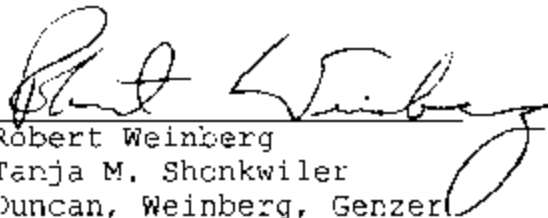
WHEREFORE, South Mississippi Electric Power Association respectfully requests that the Commission order the following relief:

1. Grant SMEPA's Motion to Intervene and allow it to participate in this proceeding for all purposes;
2. Deny Entergy's Petition; or in the alternative, order the modification of the Petition as discussed above;
3. Order that at any hearing held in this matter that SMEPA be permitted to appear by counsel, present evidence, and cross-examine the witnesses of other participants; and

4. Grant such other and further relief as the Commission may deem just and appropriate.

Dated: May 5, 1999

Respectfully submitted,



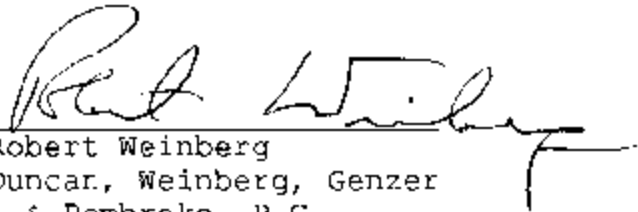
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this docket. Dated at Washington, D.C., this 5th day of May, 1999.



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