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May 17, 1999

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STATE OF TEXAS

Ms. Lois D. Cashell, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Dockets Room, Office of the Secretary
Washington, D.C. 20426

Re: *Docket No. EL99-57-000, Petition of Entergy Services, Inc. for Declaratory Order Regarding Compliance of Transco Proposal with Applicable ISO Principles, In the United States of America Federal Energy Regulatory Commission*

Dear Mr. Langer:

Enclosed for filing in the above-referenced case are the original and 14 copies of the Public Utility Commission of Texas' Motion To Intervene Out Of Time.

I have also enclosed an extra copy of this Motion for my files. Please file stamp and return that extra copy in the enclosed self-addressed and postage paid envelope. Thank you for your assistance in this matter.

Sincerely,

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Enclosures
cc: service list
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dbffferc/el99.57/lekl/lt

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

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FEDERAL ENERGY
REGULATORY
COMMISSION

Petition of Entergy Services, Inc. §
for Declaratory Order Regarding §
Compliance of Transco Proposal §
with Applicable ISO Principles §

Docket No. EL99-57-000

**PUBLIC UTILITY COMMISSION OF TEXAS'
MOTION TO INTERVENE OUT OF TIME**

Pursuant to Rule 214 of the Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure, the Public Utility Commission of Texas (Texas PUC), through the Office of the Attorney General of Texas, files this motion to intervene out of time in the above proceeding as follows:

1. **Name and representatives.** Movant's name is the Public Utility Commission of Texas. The representatives of the Texas PUC to whom communications concerning this proceeding should be addressed are:

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2. **Nature of proceedings.** Docket No. EL99-57-000 concerns the application by Entergy Services, Inc., (Entergy) for a declaratory order approving its Transco proposal.

FERC DOCUMENTED

3. The Texas PUC has a direct, material interest in the outcome of this proceeding as regulator of electric utilities within Texas including Entergy. No other party to the proceeding can adequately represent the Texas PUC's interest. The Texas PUC's participation in this proceeding is in the public interest.

4. Inasmuch as the proceeding is in a very early stage and the Texas PUC agrees to accept the record as it presently exists, no disruption to the proceedings and no prejudice to, or additional burdens upon, the existing parties will result from permitting the intervention.

5. **Position.** The Texas PUC states the following position:

Introduction

Entergy Services, Inc., has filed a request with the FERC for expedited issuance of a declaratory order that the transmission company (transco) that it proposes to create would be consistent with the principles adopted by the FERC for the approval of independent system operators. Entergy intends that the declaratory order be the first step in a process to develop an independent transco that incorporates the transmission assets of Entergy and other transmission owners in the south-east United States.

The Texas PUC is a regulatory agency with the authority to set retail rates for Entergy in its Texas service area. The Texas legislature has made a statutory declaration that wholesale competition is consistent with the public interest, and the

Texas Commission has adopted rules promoting wholesale competition in the Electric Reliability Council of Texas (ERCOT). The Texas PUC also supports the development of wholesale competition in the non-ERCOT areas of Texas, including the area in which Entergy operates.

The Texas PUC has approved an independent system operator (ISO) for ERCOT. In other areas of the country, the FERC has approved ISOs to manage transmission systems. The Entergy transco proposal represents a different approach to achieving important objectives that would foster wholesale competition: (1) separating the management and operation of the transmission system from the management and operation of generating facilities and (2) creating a regional transmission management organization. The Texas PUC supports Entergy's efforts to achieve these objectives. The request for a declaratory order is just the first step in these efforts, however. The proof of the Entergy approach will be whether it is able to recruit other transmission owners in its region to join the transco in establishing an independent transmission operation. The FERC declaratory order should make it clear that a transco must be truly independent of generation owners in the region, have adequate access to capital to operate as an independent transmission business, and attract the participation of the other transmission owners in its region.

Statement of Position

The Texas PUC has filed comments in connection with the FERC's consultation with the states concerning Regional Transmission Organizations, Docket No. RM99-2-000. As we noted in those comments, the ERCOT transmission network is located entirely within Texas and is subject to the wholesale and retail jurisdiction of the Texas PUC. The utilities in the non-ERCOT regions of Texas are subject to the wholesale jurisdiction of the FERC and retail jurisdiction of the Texas PUC. The large transmission-owning utilities that provide service in the non-ERCOT regions of Texas also provide retail service in neighboring states and are subject to retail regulation by the authorities of the other states.

In 1995, the Texas Legislature amended the Public Utility Regulatory Act to require the Texas PUC to establish open-access transmission service, to promote competition in the wholesale market. The Texas PUC adopted open-access rules for the ERCOT wholesale market in early 1996. The Texas PUC's rules, like the FERC open-access rules, are designed to remove the impediments to third-party access to the transmission system and foster increased competition in wholesale power markets. The Texas PUC's rules also adopted a regional transmission pricing mechanism, so that transmission rates within ERCOT were not pancaked.

In adopting these transmission rules, the Texas PUC approved the creation of an ISO in ERCOT. The ISO serves as a gatekeeper for the transmission system, and

plays a key role in ensuring that the policy of non-discriminatory access is a reality. Transmission access decisions are made by the ISO, rather than by a utility that is also one of the competitors in the generation market. Other responsibilities of the ISO include: (a) ensuring the reliable operation of the bulk electric system, (b) coordinating transmission planning for the ERCOT region, and (c) operating an electronic transmission information network. The PUC believes that regional pricing and the ISO have played crucial roles in the development of a competitive wholesale market in ERCOT. The Texas PUC recently revised its open-access transmission rules, primarily to facilitate the interconnection of new generating facilities and enhance the ISO's role in planning transmission facilities.

Despite the FERC's adoption of Order No. 888, a number of problems exist with respect to wholesale transmission service. In many areas of the country, there is not any significant regional integration of transmission operations, and transmission access and pricing are subject to the separate rules of individual utilities. Rates are pancaked or are overly sensitive to distance. Functional unbundling has not removed integrated utility companies' motive and opportunity to discriminate against other market participants, particularly those that do not own transmission. Finally, where there is no regional integration, one utility can, in effect, sell transmission service on other utilities' systems, resulting in loop-flow and reliability problems. Independent system operators have been developed in several regions to meet the need for regional transmission management that is independent of owners of generation facilities. The

ISO is typically an umbrella organization that operates the transmission assets of a number of separate companies in a region in an unbiased manner, so that all participants in the market have equal access to transmission facilities.

Key principles of transmission system management in a competitive environment

The Texas PUC believes that the following principles should be applied in the management of a transmission system in a competitive environment:

Pricing

1. There should be a regional pricing scheme for an appropriate trading area.
2. Prices should be transparent.
3. Service providers should recover their costs through economically efficient prices.

Access

1. Transmission customers should have one-stop shopping in obtaining regional transmission system information and initiating service, including obtaining interconnection.

2. Planning and expansion of transmission facilities should be conducted on a regional basis, with the objective of ensuring customer access to the broadest feasible markets.

Reliability

1. Reliability should be managed on a regional basis.
2. Mechanisms should be established for enforcement of standards and decisions relating to reliability.

All of these rules must be applied in a non-discriminatory manner. The key enhancements to transmission access and operations that are needed today are separation of generation operations from transmission operations and regionalization of transmission management. It is the Texas PUC's belief that there are significant operational interactions among the transmission owners in a region that affect reliability and third-party access, so that in many instances the transmission facilities of the utilities in a region operate as a single transmission system. At the same time, the present situation, in which the transmission and generation functions are integrated in a single utility, results in motive and opportunity for an integrated utility to favor its own generation function over competitors, in providing transmission service. In order to foster competition and enhance reliability, all of the transmission facilities in a region should be managed by an organization that is independent from

the competing generators. Independent system operators are a way of achieving these objectives.

The Entergy proposal

Entergy proposes a different approach to creating a regional transmission organization. It proposes a for-profit transmission company that would be created with the transmission assets of Entergy and any other transmission owner in the region that is willing to join the transco. At this initial stage, it does not have commitments from other transmission owners to join the transco or detailed plans about key issues, such as pricing. It contemplates that if the FERC grants the declaration it seeks (that the transco proposal is consistent with the FERC's ISO principles), it would recruit other transmission owners to join the transco and with them develop the detailed plans. The FERC would then be asked to approve the organization of the transco and its tariffs for offering transmission service.

Key Issues

1. Whether the transco would be sufficiently independent from Entergy and other owners of generation facilities.

The Texas PUC's primary concern with respect to the Entergy proposal is that any resulting transmission organization be managed in such a way that no competitor in the market can gain inappropriate advantages over others with respect to

transmission access, pricing, operations, and expansion. These decisions need to be made in a competitively neutral manner. In our view, the Entergy proposal offers promise, but there are areas of uncertainty that will not be resolved until it is known whether other transmission owners have joined the transco and the final details are provided concerning its organization and management.

One of the Texas PUC's concerns with respect to independence is that the directors and employees of the transco may have a degree of loyalty to Entergy. The directors are likely to have some loyalty to Entergy, because it is the owner of the transco and Entergy may have the power to appoint them. The employees may have a degree of loyalty to Entergy, because of their prior employment with Entergy and the prospect that Entergy may dissolve the transco and reacquire the transmission assets and employees it dedicated to the transco.

Another issue relating to independence is whether a transco whose directors are appointed by generation owners will operate in the interests of local generation owners. If they do, they might act against the interests of consumers of electricity by, for example, impeding efforts to strengthen transmission ties with other regions. The proposal contemplates that the members of the transco (that is, utilities that contribute transmission facilities to the transco) could appoint the board members, when sufficient transmission owners join the transco to dilute Entergy's ownership interest. This arrangement may be acceptable from the perspective of appointing a board that

is independent of Entergy, but it would permit a board to be appointed that could operate as a cartel in the interests of the other generation owners in the region. The Entergy filing notes that the use of a stakeholder committee to appoint the directors of the transco would be acceptable to Entergy for initial appointments. The FERC should make it clear that independence is required not only for initial appointments but also for successive appointments. A mechanism like a stakeholder committee to make appointments should be seriously considered as a feature of the plan that endures as long as Entergy and other generation owners retain special rights by virtue of their ownership of the transco.

Another area of concern is financial independence: will the transco will have access to the capital needed to operate truly independently of Entergy and any other transmission owners that contribute transmission assets to it. The request for a declaratory order leaves a number of details of the management of the transco unresolved, but it appears that the transco proposed by Entergy would be able to incur debt but not to issue equity interests (except in exchange for contributions of transmission facilities by new members). In addition, there may be doubts about whether it will be an enduring business entity. In our view, the second filing, the request for approval of the transco and its transmission tariffs, must make it clear that the transco will have adequate access to capital to operate as an ongoing business that may need to make significant investments in new transmission facilities in a more competitive environment.

The independence criteria are the most important element in the creation of a regional transmission organization. If the RTO is to be a for-profit company, it needs strong guarantees of the independence of the directors of the interests of the generation owners in the region, and it needs to be financially independent.

2. Whether the Entergy proposal will result in a sufficiently large and comprehensive transmission system.

A regional transmission organization should be large and comprehensive. A broad geographic area under unified transmission management would foster competition by eliminating rate pancaking and permitting many buyers and sellers to readily participate in a market. Producers, transmission operators, traders, and customers should not have to routinely deal with multiple sets of access and pricing rules and reliability requirements in buying, selling, and transmitting power. A broad area under unified transmission management would also facilitate reliable operation of the electric system. Interfaces between ISOs or other transmission operators appear to be a source of complications for transmission operators in maintaining reliability and for third parties in obtaining transmission service. In other words, if a regional transmission organization is of a sufficient size, a large, vibrant wholesale market can be created, and it will be easier to achieve efficient, reliable operation of the electrical network and rational pricing of transmission service.

The Entergy plan reflects a sound objective, namely, developing a large and comprehensive transmission system under unified management. At this point, however, it is merely an objective, and the process for developing the transco creates uncertainty about its ultimate size and shape. Moreover, Entergy appears to be hemmed in by natural boundaries or utilities that would not be receptive to joining the transco: ERCOT to the west, Southern Company and the Tennessee Valley Authority to the east and northeast, and the Southwest Power Pool to the north and northwest. The prospects for outward expansion of the transco in the near future appear to be remote. The prospects for expansion within the Arkansas-Louisiana-Mississippi-East Texas region to include smaller companies are uncertain. Entergy has structured the transco organization to encourage other utilities to join it, but it is not clear whether they will. The Texas PUC believes that the minimum criterion for approval of a transco in this region is a transmission organization that includes all of the transmission facilities in the region bounded by ERCOT, the SPP, TVA, and the Southern Company.

3. Whether a for-profit company is better than a not-for-profit organization for managing the transmission assets of a region.

One of the debates in the industry today is whether large regional transmission systems should be managed by a business enterprise, a government-owned entity, or a joint venture of all of the market participants (the ISO model). Entergy asserts that

that there are significant advantages to a for-profit transmission company: (1) the synergies of combining operations, maintenance, planning, finance, and construction management in the same organization, and (2) the ready access to capital of a for-profit company. These are important advantages, if they are achieved. They are not as important in today's industry, however, as establishing truly independent transmission management. The other reservation with respect to the Entergy proposal is whether it will really achieve these objectives. As is noted above, the transco proposed by Entergy has the ability to incur debt but limited ability to issue equity interests, and there may be doubts about whether it will be an enduring business entity. Assuming that the FERC issues a declaratory order permitting it to proceed with further development of its proposal, Entergy needs to create an organization that has independent access to capital on reasonable terms and the organizational features that will permit it to operate as enduring business entity.

4. Whether the Entergy transco proposal is more likely to result in a large, independent, efficient transmission entity than other possible options.

Entergy has expressed the view that the two-stage process outlined in the application will minimize the costs and regulatory risks for other entities that might be willing to commit transmission assets to the transco. On the other hand, this process makes it more difficult to judge the final shape of the transco and whether it will meet the important criteria: independence, size, and inclusiveness of the other

transmission facilities in the region. The issuance of a declaratory order affords the FERC an opportunity to clearly state the criteria that Entergy must meet in developing the details of its transco proposal. The Texas PUC urges the FERC to make it clear that any transco must be independent of generation owners in the region in which it operates and must include a commitment from the other transmission owners in the region to dedicate their transmission facilities to the transco.

WHEREFORE, the Texas PUC prays that the FERC grant this motion to intervene out of time and such other relief to which the Texas PUC may be justly entitled.

Respectfully submitted this 17th day of May, 1999.

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Attorney General of Texas

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ATTORNEYS FOR PUBLIC UTILITY
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CERTIFICATE OF SERVICE

I certify that on this 17th day of May 1999, a true and correct copy of the foregoing document has been sent by United States mail, postage prepaid, to all persons listed on the attached service list.


DOUGLAS FRASER

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144817	NUCOR-YAMATO STEEL	100858	GARRETT A. STONE ESQUIRE BRICKFIELD, BURCHETTE & RITTS, P.C. 1025 THOMAS JEFFERSON STREET, N.W. WEST TOWER - 8TH FLOOR WASHINGTON, DC 20007
104688	TODD GUERRERO ESQUIRE OTTER TAIL POWER COMPANY 215 SOUTH CASCADE STREET P. O. BOX 496 FERGUS FALLS, MN 56538-0496	100875	THOMAS W. WILCOX ESQUIRE DONBLAN, CLEARY, WOOD & MASER, P.C. SUITE 750 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005-3934
101613	ROBERT N. SPENCER DIRECTOR PECO ENERGY COMPANY (PA) 2301 MARKET STREET POST OFFICE BOX 8699 PHILADELPHIA, PA 19101-8699	101613	VILNA WALDRON GASTON ESQUIRE PECO ENERGY COMPANY (PA) 2301 MARKET STREET POST OFFICE BOX 8699 PHILADELPHIA, PA 19101-8699
156370	RALPH R. MABEY, TRUSTEE FOR CAJUN EL.PWR	100468	THOMAS L. RUDRUSCH ESQUIRE DUNCAN, WEINBERG, GENZER & PEMBROKE (DC) SUITE 800 1615 M STREET, N.W. WASHINGTON, DC 20036

100414	TIM WOODBURY V. PRESIDENT SEMINOLE ELECTRIC COOPERATIVE, INC. (FL) 16313 NORTH DALE MABRY HIGHWAY P.O. BOX 272000 TAMPA, FL 33688-2000		
100465	JOHN CARLEY MANAGER SOUTH MISSISSIPPI ELECTRIC POWER ASSN 7037 US HIGHWAY 49 POST OFFICE BOX 15849 HATTIESBURG, MS 39404		
100465	JOHN CARLEY, JR. MANAGER SOUTH MISSISSIPPI ELECTRIC POWER ASSN 7037 US HIGHWAY 49 POST OFFICE BOX 15849 HATTIESBURG, MS 39404	100468	ROBERT WEIBERG ESQUIRE DUNCAN, WEINBERG, GENZER & PEMBROKE (DC) SUITE 800 1615 M STREET, N.W. WASHINGTON, DC 20036
100465	JOHN CARLEY, JR. 1 MANAGER SOUTH MISSISSIPPI ELECTRIC POWER ASSN 7037 US HIGHWAY 49 POST OFFICE BOX 15849 HATTIESBURG, MS 39404	138164	JAMES N. COMPTON ESQUIRE COMPTON, CROWELL AND HEWITT ATTORNEYS AT LAW POST OFFICE DRAWER 1937 BILOXI, MS 39533
100465	JOHN CARLEY, JR. 2 MANAGER SOUTH MISSISSIPPI ELECTRIC POWER ASSN 7037 US HIGHWAY 49 POST OFFICE BOX 15849 HATTIESBURG, MS 39404	103234	STEPHEN PAGE DANIEL ESQUIRE GDS ASSOCIATES, INC. SUITE 720 1850 PARKWAY PLACE MARIETTA, GA 30067-8237
100316	SOUTHWESTERN ELECTRIC POWER COMPANY	103008	MARTIN V. KIRKWOOD ESQUIRE JONES, DAY, REAVIS & POGUE (DC) 1450 G STREET, N.W. WASHINGTON, DC 20005-2088
100316	SOUTHWESTERN ELECTRIC POWER COMPANY	166948	BILL SPEARS MANAGER CENTRAL AND SOUTH WEST SERVICES, INC. P. O. BOX 660154 1616 WOODALL RODGERS FREEWAY DALLAS, TX 75266-0164
156088	TEXAS INDUSTRIAL ENERGY CONSUMER	156089	REX D. VANMIDDLESWORTH ESQUIRE MAYOR, DAY, CALDWELL & KEEFON, L.L.P. 100 CONGRESS AVENUE SUITE 1500 AUSTIN, TX 78701-4042
168134	RAYMOND L. COXE V. PRESIDENT TRANSENERGIE U.S. LTD. (MA) 110 TURNPIKE ROAD SUITE 300 WESTBOROUGH, MA 01581-2864	100879	GEORGE H. WILLIAMS, JR. ESQUIRE CAMERON MCKENNA LLP (DC) 2175 K STREET, N.W. 5TH FLOOR WASHINGTON, DC 20037
162693	TRANSMISSION DEPENDENT UTILITY SYSTEMS	100405	SUSAN N. KELLY ESQUIRE MILLER, BALIS & O'NEIL, P.C. (DC) 1140 19TH STREET, N.W. SUITE 700 WASHINGTON, DC 20036

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