

ORIGINAL

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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OFFICE OF THE SECRETARY  
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FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

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Docket No. EL99-57-000

MOTION OF  
TRANSÉNERGIE U.S. LTD.  
TO INTERVENE AND COMMENT

Pursuant to Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.214 and 385.211 (1998), TransÉnergie U.S. Ltd. ("TransÉnergie") hereby moves to intervene and comment in the above-captioned proceeding.

I. INTRODUCTION

On April 5, 1999, Entergy Services, Inc. ("Entergy") filed, in the above-captioned docket, its *Petition for Declaratory Order Regarding Compliance of Transco Proposal with Applicable ISO Principle* ("Petition"). The Petition sets forth a proposal for an incentive-driven regional transmission company ("Transco") and requests that the Commission find that the proposed Transco satisfies the Commission's ISO principles.<sup>1</sup>

TransÉnergie seeks to intervene in this docket to comment on the Petition. TransÉnergie requests that the Commission in its consideration of the specific facts of the Entergy case remain sensitive to the need to formulate a forward looking policy for flexible development of regional

<sup>1</sup> The ISO principles are set forth in some detail in *Atlantic City Elec. Co.*, 77 FERC ¶ 61,148, at 61,574-81 (1996).

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transmission markets.<sup>2</sup> More particularly, TransÉnergie urges the Commission, in acting upon the proposed Transco, not to inadvertently foreclose other transmission options (including merchant transmission projects developed by entrepreneurial transmission providers), by designing regulatory constraints that may be appropriate to the facts of the Entergy case but that are formulated in a way that might give them unduly broad applications. In sum, at this early stage of the development of Transcos, ISOs, merchant transmission projects, and (most critically) a viable market in tradable property rights, the Commission should avoid being generically proscriptive in acting on individual applications with particular facts. Just as the Commission has encouraged innovation in designing regional markets for energy production, the Commission should encourage innovation in the design of regional markets for energy transportation. The market for transmission rights is only now emerging, and innovative market designs should not be strangled in the crib.

## II. MOTION TO INTERVENE

TransÉnergie respectfully moves to intervene and submits that it meets the Commission's requirements for timely interventions. TransÉnergie is the US transmission project development subsidiary of Hydro-Québec, a large Canadian utility that is a long-standing and active participant in

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<sup>2</sup> See Commission Conferences held on February 11, 12, and 17 of this year, regarding the creation and implementation of regional transmission organizations ("RTOs").

American power markets. One of TransÉnergie's business interests is the development of independent transmission projects, including merchant transmission lines that are funded solely from market-based revenues for the sale of transmission service.

Recently, in Australia, TransÉnergie assisted in developing a framework for electric deregulation that featured a merchant interconnector to enhance transmission capability. A merchant interconnector is a transmission line connecting two regional electricity markets. It is primarily built to facilitate interregional trades in capacity and energy. It is a "merchant line" because it is typically not essential for reliability reasons, but instead provides competition to local generation by allowing distant generation to compete in the importing region where there is sufficient capacity to operate the system reliably. Therefore, the primary commercial purpose of such interconnections is not to enhance reliability (although they will do so), but to allow distant sources of energy to reach higher value markets.

Currently, TransÉnergie is developing similar merchant transmission projects in the United States, including the development of an interconnector link between the New York and New England power pools. As a developer of regional transmission throughout the world, TransÉnergie has a direct and unique interest in the Petition at issue in this proceeding.

Communications with respect to this motion should be directed to the following:

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### **III. COMMENTS**

#### **A. Background**

As the Commission transitions from the old tightly regulated electric industry to a more competitive regime, efficient transmission expansion plays a critical role in fostering energy market liquidity and efficiency. Transmission interconnectors offer regulatory as well as economic benefits to developing power markets. Interconnectors facilitate the development of regional transmission organizations by joining neighboring power pools and by increasing transmission capability on a region-wide basis. While the primary purpose of such an interconnector is to foster markets between RTOs, transmission interconnectors can also increase some power flows onto more efficient and less congested paths, thereby improving both the efficiency and reliability of a transmission system.

Historically, transmission expansion has generally proceeded on the basis of agreements between transmission owning utilities that provide for

regulated returns on investments under a cost-based pricing scheme.<sup>3</sup> The absence of a robust wholesale market and the lack of unbundled services precluded the development of merchant transmission lines. Since the Energy Policy Act of 1992, the Commission has steadily removed those institutional barriers.<sup>4</sup> Moreover, significant advances in transmission technology, such as advanced direct current and underground transmission cables, are rapidly increasing the commercial feasibility of merchant transmission lines. Given these changes, merchant transmission lines are more readily developed, providing benefits to virtually all players in competitive power markets.

#### **B. Merchant Transmission Interconnectors Enhance Competition**

Merchant transmission lines offer particular benefits to a more competitive electric market. Unlike more traditional forms of transmission expansion, merchant transmission lines -- where risks and rewards are allocated on a free market basis<sup>5</sup> -- do not impose stranded cost risks on

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<sup>3</sup> See, e.g., *New England Power Pool*, 83 FERC ¶ 61,045, at 61,239 (1998).

<sup>4</sup> See, *Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. 31,036 at 31,726-28 (1996) ("Order No. 888"); See, also 18 C.F.R. § 35.28 (1995).

<sup>5</sup> It has been conventional wisdom that electric transmission service is a "natural monopoly" and that, in consequence, such transmission service should be priced on a cost-of-service basis under FERC's traditional transmission and requirements service pricing policies. However, it is only if the transmission owner is in a position to, and chooses to, exercise market power to the detriment of competition (e.g., by withholding or constraining availability of the service in order to drive up prices) that the Commission's need to impose regulatory constraints in order to protect competition is triggered. Courts in antitrust cases have held that the mere possession or acquisition of monopoly power (e.g., through early entry into a market) is not per se anticompetitive. *Standard Oil v. United States*, 221 U.S. 1, 55 L. ed. 619, at 621 (1910). Moreover, to the extent that the capacity in a merchant  
(Footnoted continued...)

captive ratepayers who have no choice of transmission provider. Instead, developers rightly assume the costs and risks associated with each project. Therefore, responsibility for future costs is well defined and all risks are adequately assigned to parties who are in the best position to bear them, thereby eliminating the risk of stranded transmission costs.

Because such merchant transmission interconnectors do not conceal or shift project costs, they provide market participants with clear price signals.<sup>6</sup> As a result, they reflect the true value of the transmission provided over the interface concerned and thereby encourage efficient use and expansion of that interface.<sup>7</sup> Such efficient use would, over time, enable transmission capacity to more closely match transmission demand, bringing additional economic gains to regional power markets.

These market efficiencies and attendant economic gains are not limited to transmission markets. Merchant transmission interconnectors enhance competition in generation markets as well. By increasing transmission efficiency, such interconnectors cultivate a more liquid generation market. Merchant transmission providers can offer a range of

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(...Footnote continued)

transmission line is offered at auction, market-based pricing for such transmission would be consistent with the Commission's view in Docket No. RM98-10. In that rulemaking, the Commission proposes to deregulate the price of short-term natural gas transportation capacity where excess capacity is offered at auction.

<sup>6</sup> See, *New England Power Pool*, 83 FERC ¶ 61,045, at 61,238 (1998) (where the Commission eschewed cost shifting by transmission providers).

<sup>7</sup> See, *Pennsylvania-NJ-Md Interconnection*, 81 FERC ¶ 61,257, at 62,258 (1997).

physical and financial energy transportation products that can further facilitate competitive electricity markets. For instance, transmission entrepreneurs can offer either financial "Firm Transmission Rights" or physical rights to transmit capacity, with more market-responsive commercial terms. This greater variety of transmission products will allow more generation to compete in a greater variety of markets, creating a more robust power market.

**C. Commission Approval of Current Transco Proposals Should Not Constrain the Future Development of Independent Merchant Interconnectors**

Because merchant transmission interconnectors are independent additions linking transmission systems or providing greater transmission service within a market, their development does not hinge on whether the transmission market is governed by an ISO, a Transco or some other entity. Merchant transmission interconnectors should complement any governing structure and assist in the attainment of key Commission goals, including "develop[ing] mechanisms to coordinate with neighboring control areas."<sup>8</sup>

In acting on the proposed Transco, the Commission should not inadvertently hamper or restrict the development of merchant transmission interconnectors. *See, Midwest Indep. Transmission Sys. Operator*, 84 FERC ¶ 61,231 at 62,146 (1998) ("Midwest ISO"). In that case, the Commission noted the emerging development of merchant transmission lines in the

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<sup>8</sup> ISO Principle 10, *Atlantic City Elec. Co.*, 77 FERC ¶ 61,148, at 61,581 (1996).

context of a request, similar to TransEnergie's request here, not to inadvertently preclude merchant transmission lines in acting on the Midwest ISO proposal. In keeping with that request, the Commission authorized the Midwest ISO without precluding the development of merchant transmission lines.

Nothing in Entergy's Transco proposal suggests that transmission expansion must, or even should, be the exclusive domain of the Transco. To the contrary, the Petition states that the goal of the transmission planning process "will be to identify *all potential* resource options that can efficiently improve reliability, relieve congestion, and increase regional transactions"<sup>9</sup> (emphasis added). In addition, the Petition contemplates a variety of regional transmission efforts and states that the transmission planning process shall "provide coordination with existing interconnected transmission systems and other interregional and local expansion plans."<sup>10</sup> Furthermore, the Petition states that any market participant may opt to finance desired facilities independent of the transmission planning process.<sup>11</sup> Finally, Entergy emphasizes that it remains open minded regarding "alternative structures that others may propose to enhance the basic goals of promoting regional

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<sup>9</sup> Petition, 17. This may be an emerging norm. In California, for example, the California ISO Tariff provides for sponsored expansion by entities other than the ISO and incumbent transmission owners. California ISO Tariff § 3.2.

<sup>10</sup> Petition, Appendix 4, at 2.

<sup>11</sup> Petition, Appendix 4, at 3.

energy markets, improving reliability and relieving transmission congestion."<sup>12</sup>

The Commission has noted that the ISO principles, which are applicable to the instant Petition, should serve three basic goals: "the provision of not unduly discriminatory transmission service; the promotion of fair and efficient competition; and the promotion of a reliable transmission system."<sup>13</sup> Merchant transmission interconnectors would assist ISOs and Transcos in meeting these goals and, hence, should not be restricted.

Further, the Commission has explained that greater flexibility in pricing transmission will advance the goals of the ISO principles.

First, exclusive use of methods that worked reasonably well in the past does not provide sufficient flexibility to accommodate the evolving needs of transmission owners and users in a more competitive era. Second, existing "or" pricing policy may not always encourage the most efficient investments in and use of the transmission grid. Third, regional differences, such as power flow patterns and population densities, justify a more flexible policy that can account for such differences. Fourth, a more flexible pricing policy may be necessary to implement effectively our regional transmission group (RTG) policy...<sup>14</sup>

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<sup>12</sup> Petition 6, n.6.

<sup>13</sup> *Midwest ISO*, 84 FERC ¶ 61,231, at 62,142 (1998).

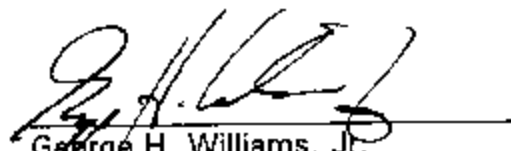
<sup>14</sup> "Transmission Pricing Policy," 71 FERC ¶ 61,195, at 61,689 (1995). The Commission's current policy with respect to ISOs and RTOs has evolved from the cited Transmission Pricing Policy regarding RTGs; the arguments for a similar more flexible pricing policy appear equally applicable in the ISO/RTO context.

As discussed above, merchant transmission lines and interconnectors are not only consistent with Entergy's Transco proposal but also advance the Commission's long-standing policy of expanding regional transmission options. Therefore, any action regarding Entergy's Transco proposal should affirm that the development of merchant transmission interconnectors will not be constrained.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, TransEnergie respectfully (1) moves to intervene, and (2) requests that the Commission assure that its actions on the proposed Transco do not inhibit the future development of independent merchant transmission projects.

Respectfully submitted,



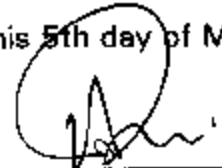
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Dated: May 5, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the parties designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R § 385.2010).

Dated at Washington, D.C. on this 5th day of May, 1999.

  
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Harry Dupre