UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc. ) Docket No. EL99-_____

PETITION OF ENTERGY SERVICES, INC. FOR DECLARATORY ORDER REGARDING COMPLIANCE OF TRANSCO PROPOSAL WITH APPLICABLE ISO PRINCIPLES

Pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(2)(1998), Entergy Services, Inc., on behalf of the Entergy Operating Companies¹ (together "Entergy"), and other potential participating companies, submits this Petition for a declaratory order. Entergy seeks a declaratory order providing Commission guidance on this proposal to create a "Transco," 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. Entergy asks the Commission to provide guidance on the compatibility of the Transco with applicable Commission ISO

¹ Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. are the utilities that comprise the Entergy Operating Companies.
principles contained in Order Nos. 888 and 888-A. Specifically, Entergy asks the Commission to issue a declaratory order that this Transco proposal is consistent with all relevant ISO principles, especially those involving independence, governance, and conflicts of interest.

Entergy requests that the Commission issue the requested declaratory order no later than the end of July 1999. By timely issuing a declaratory order, the Commission will foster the development of a regional transmission entity and remove potential doubts about this Transco proposal. This should enable Entergy to finalize details of a Transco plan that can then be presented to all interested stakeholders and local regulatory authorities for their input and, where applicable, approvals. Perhaps more important, with a timely FERC declaratory order in hand, Entergy will be in a much better position to discuss and market the Transco structure to other transmission owners. Without the regulatory certainty such a declaratory order will bring, other

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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. Moreover, a timely Commission declaratory order will give much needed Commission guidance and facilitate Entergy's ability to convince other transmission-owning entities to join the Transco. This will help Entergy meet an important, if not critical, Commission goal: developing a Transco that can cover an even larger region than Entergy's current transmission grid.

In addition, certain jurisdictions in which Entergy currently operates at retail are beginning to evaluate the implementation of retail access. These jurisdictions are contemplating implementing retail access during the 2001-2002 timeframe. A declaratory order by the Commission no later than the end of July 1999 will facilitate having a Transco in effect and operating for the start of such retail access should it be ordered. Thus, responding to Entergy's request for expedited action on this Petition will continue the Commission's tradition of accommodating state-determined start-up dates for retail access.

Once the Commission issues the requested declaratory order, Entergy commits to file no later than eighteen months\(^3\) thereafter the necessary Federal Power Act

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\(^3\) Depending on the final state determined start-up dates for retail access in the states Entergy operates, it may be necessary to file full blown Federal Power Act section 203 and 205 applications earlier than 18 months after this Petition
sections 203 and 205\textsuperscript{4} applications to establish formally an independent transmission company. This will give Entergy time to meet with other transmission owners and all relevant stakeholders to refine the Transco proposal, receive state commission input and approvals, and negotiate and finalize all necessary Transco-related documents. Entergy further commits to have the Transco established and in service within 9 months of a final and non-appealable FERC order approving the sections 203 and 205 filings assuming all state and other Federal authorizations have been obtained.

\underline{is acted upon. Entergy is committed to filing such applications at an earlier date if such action is necessary to implement the start dates for state-ordered retail access.}

\textsuperscript{4} While issuing the requested declaratory order will assist Entergy in shaping the Transco proposal, the order will not bind the Commission when it reviews the specific aspects of a Transco plan in the subsequent Federal Power Act section 203 and 205 filings. Moreover, it is likely that, as additional transmission owners are brought in as members, and input is received from other stakeholders, certain provisions of the Transco may change to reflect additional input and to address concerns that may arise.
Finally, Entergy is aware that the Commission is contemplating a Notice of Proposed Rulemaking on regional transmission organization policy. Entergy respectfully requests that the Commission proceed with processing this Petition and issuing the requested declaratory order independently of any such rulemaking. Holding this petition in abeyance pending the outcome of any such rulemaking will likely delay, not foster, the development of a Regional Transmission Entity in the Southeast. Moreover, the experience the Commission will gain from processing and monitoring this endeavor will be invaluable during the pendency of any potential NOPR. In fact, by enabling this Transco to go forward, the Commission will have an actual, ongoing proposal which it can monitor and learn from as it develops potentially generic regional transmission policies. Thus, Entergy requests the Commission to issue the requested declaratory order no later than July 1999.

I. OVERVIEW

Entergy is currently planning and developing a Transco that will control and operate Entergy's, as well as other entities', transmission assets. Through appropriate mechanisms, the Transco will be an incentive-driven grid operator providing reliable, region-wide transmission and related services. Under the proposed plan, the Transco will be a Limited Liability Company ("LLC") created under Delaware law that will be

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5 Entergy commits that it will abide by the outcome of any final and non-appealable rulemaking order that might modify any relevant regional transmission organization related policies or principles.
managed and governed by an independent, seven-member board with no ties to Entergy, its Operating Companies or any of the other current transmission-owning entities that decide to join the Transco (hereinafter the "Member Companies"). As more fully described below, the Member Companies (including Entergy) will transfer their transmission assets, either through transfer of ownership or lease, to the LLC and receive a passive ownership interest in the LLC.

Since unveiling the general outline of its Transco plan before this Commission on April 16, 1998, Entergy has been steadily developing this proposed plan and consulting with state commissions, transmission owners, and other relevant stakeholders.\(^6\) Entergy has analyzed a number of the issues and worked out important details of its plan. It is continuing to iron-out a number of details regarding the proposed terms and conditions of the Transco. As noted earlier, Entergy is in the process of seeking the active participation of the other potential Member Companies. Then, the Member Companies will have to file for and receive applicable approvals from state regulators regarding the transfer of transmission facilities or rights therein.

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\(^6\) As the Commission knows, Entergy first unveiled this Transco proposal at the FERC's April 1998 public conference discussing future policy transmission policies. As industry restructuring proceeds apace, the public debate on future transmission policies has developed rapidly. Entergy has tried to learn from this debate and has tailored this proposal accordingly. As this debate continues, Entergy remains open-minded on alternative structures that others may propose to the extent such other proposals enhance the basic goals of promoting regional energy markets, improving reliability, and relieving transmission congestion.
to the Transco. Therefore, Entergy is not at this time requesting approval under section 203 of the Federal Power Act ("FPA"), 16 U.S.C. § 824b(a), to transfer assets to the Transco's control nor is it requesting approval under section 205 of the FPA, 16 U.S.C. § 824(d), of all pertinent agreements regarding the Transco.

At the same time, Entergy believes it is critical to receive guidance from this Commission on the general acceptability of its proposal. It has been quite difficult for Entergy to market the Transco to other potential Member Companies without practical guidance from the Commission on whether the proposal complies with the applicable ISO principles generally, and particularly the independence principle, which is the "bedrock upon which an ISO must be built."7 Indeed, in its initial discussions with other transmission-owning entities who may be interested in joining the Transco, and with state regulatory commissions, the "independence" issue has been consistently raised as an important threshold issue regarding the formation of a proposed Transco. Guidance on that issue through the requested declaratory order, therefore, is essential to allow Entergy, other transmission owners, state commissions, and all stakeholders to move forward with this proposal in a timely manner. The declaratory order will not only remove uncertainties regarding formation of this

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regional transmission entity, but also enable the Commission to help shape the
ultimate structure of the proposed Transco.

Providing the requested declaratory order also will be consistent with the twostep process that the Commission has used in proceedings seeking approval of ISOS. For example, in the cases of the California, PJM, NEPOOL, and New York ISOs, the Commission issued a preliminary order determining whether the ISOS complied with the eleven ISO Principles and providing guidance to the parties on how to structure ISOS to satisfy those principles. In those initial orders, the Commission provided general guidance on the justness and reasonableness of the ISO proposals, but reserved judgment on the specific details of the tariffs and on ultimate approval of the proposals for a later order. Entergy respectfully requests that the Commission provide

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8 Entergy believes that, with the Commission guidance requested here in hand, it will be in a good position to present the Commission with comprehensive and complete section 203 and 205 applications at the end of negotiations with other transmission owners and stakeholders. This will avoid the somewhat iterative section 203/205 process the Commission has experienced in other ISO proceedings.

the same guidance here by issuing the requested declaratory order by the end of July 1999.

II. BACKGROUND

Entergy Corporation is a public utility holding company and the corporate parent of the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. The Entergy Operating Companies own and operate generation, transmission, and distribution facilities in four states Arkansas, Louisiana, Mississippi, and Texas. The Operating Companies provide electric service to retail customers subject to state and local regulation and transmit and sell power at wholesale, subject to regulation by this Commission. The Entergy transmission system is comprised of more than 15,200 miles of transmission lines and extends from southeastern portion of Missouri to the southern-most part of Louisiana and includes the western portion of Mississippi and the southeastern portion of Texas. A map of Entergy's transmission system is attached hereto at Appendix 1.

Entergy proposes to create an independent entity, the Transco, to control and operate transmission facilities. Under Entergy's proposal, the Transco will be a limited liability company ("LLC") under Delaware law. The Entergy Operating Companies and other Member Companies will transfer ownership or lease their transmission assets to the LLC (the Transco) in return for passive ownership interests
in the LLC in proportion to the value of the transmission assets contributed by the Member Companies. The Transco will be managed by an independent Managing Board pursuant to the Transco’s limited liability company agreement ("LLC Agreement"). The Managing Board will be independent, having no financial interest in or ties to the Member Companies other than those specified in the LLC Agreement. A draft of an illustrative LLC Agreement is attached hereto at Appendix 2. The definitive final form of the LLC Agreement will be submitted for the Commission’s review when the aforementioned section 203 and 205 filings are made.

It must be emphasized that the Member Companies will be passive owners of the Transco. The Member Companies will have no rights to manage the LLC. The only limited "rights" Member Companies will have are those rights spelled out explicitly in the LLC Agreement and its Certificate of Formation. For instance, the LLC Agreement will prohibit the Transco from contracting with the Member Companies for services except through arm's-length negotiations or competitive bidding. The LLC Agreement will provide a specific and narrow list of actions that require approval of the Member Companies. These actions will include major organic or

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10 Allowing current transmission owners to transfer or lease their assets to the Transco will give transmission owners flexibility and as many options as possible to participate in a large, regional transmission entity. Either way, the
organizational changes to the Transco such as merger, dissolution, sale of all or substantially all the Transco's assets, or commencement of bankruptcy proceedings.

As a first step in the Transco's formation, the employees of the Member Companies that are currently engaged in the operation, maintenance, restoration and construction of the covered transmission facilities will be transferred to the Transco. These employees will sever their ties with the Member Companies and will become employees of the Transco.

Transco will fully comply with relevant Commission ISO principles.
The Transco will be managed by an independent board consisting of seven managers with the expertise necessary for running an independent transmission company. The board members will be selected in a manner that ensures their independence and expertise. Under the selection process, the Member Companies will first select a nationally-recognized executive search firm that will choose a slate of candidates for the board. Either the Member Companies or a committee of stakeholders, including representatives from the Member Companies and other market participants, will then select the seven board members from this slate. While Entergy proposes to have the Member Companies select the board members from the slate of candidates and believes such a proposal is appropriate and consistent with the Commission's applicable independence criteria, Entergy 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.\(^{11}\)

The board members will serve for staggered, three-year terms unless they resign or are removed for cause. The grounds upon which the board members could be removed will be set forth specifically in the LLC Agreement. When vacancies on the board arise (either through removal or the expiration of a board member's term),

\(^{11}\) If the Commission determines that a stakeholder committee should make the final board selections, then a representative stakeholder committee would be selected, subject to negotiations among the relevant parties.
the remaining board members could either re-appoint the current board member to an additional term or select a new member with the assistance of a national search firm.

If the remaining board members could not agree on the selection of the new board member, the new board member will be chosen through the same process in which the initial board members were chosen. However, if at some point more than 50% of the interests in Transco are held by Member Companies that are not current transmission-owning entities, then vacancies on the board will be filled by a vote of the Member Companies rather than the remaining board members.

All employees and officers of the Transco will be bound by a Code of Conduct that ensures their independence from the Member Companies and any other market participants, similar to the ISOs approved to date. Such Code will prevent the control or appearance of control of any market participant over the Transco's operations.

Under this Code of Conduct, no officer or employee of the Transco will have any financial stake in any market participant, including ownership of securities. Any officer or employee who owns securities in a market participant will be required to divest those securities within six months of joining the Transco. The Code of Conduct will also prohibit any officers or employees of the Transco from disclosing to market participants non-public information regarding the operation of the Transco.

In this respect, those employees and officers are governed by the non-disclosure rules
in Order No. 889. To add further safeguards to these requirements, the Code of Conduct will require the Transco to develop procedures for adjudicating and punishing alleged violations of the Code of Conduct. A copy of the proposed Transco's Code of Conduct is attached at Exhibit 1 to the Transco's LLC Agreement.

The Transco proposal will also contain a market monitoring plan, similar to the monitoring plans approved by the Commission in orders reviewing similar ISO proposals. Like the Midwest ISO, the Transco will operate only transmission facilities, not the regional electric power market. Therefore, the market monitor will concentrate on monitoring transmission activities and other actions affecting transmission. The market monitor will monitor the behavior of the transmission owners, generators and other market participants to guard against any attempts to create transmission constraints to exclude competitors, or any other behavior that undermines the provision of transmission and related services.

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More specifically, the monitoring unit will be responsible for (1) monitoring compliance with the Transco's standards, practices, procedures, and rules as established in the Transco's tariff and operating agreements; (2) determining any design flaws in the operation of the provision of transmission service; and (3) collecting information and preparing reports to the Transco board and governmental agencies. The monitoring unit will be authorized to resolve complaints brought by market participants or provide recommendations to the Commission addressing complaints about the operation of the Transco. In response to concerns expressed by the Commission in the Midwest ISO order, the monitoring unit will engage in ongoing monitoring and will immediately report to the Commission and other appropriate regulatory authorities any problems uncovered by the monitoring unit. The monitoring plan will also contain a five-year sunset provision. A copy of the market monitoring plan is attached hereto at Appendix 3.

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Entergy currently contemplates that it will transfer to the Transco those networked assets (or rights therein) currently included in Entergy's open access transmission tariff. The transfer will be either through a contribution, a long-term lease, or similar conveyance. To the extent the transfer is accomplished other than through a contribution, it will be structured to preclude the granting company from exercising any control or authority over the operation of the Transco. In other words, it will be structured to provide the Transco with essentially the same rights to operate and maintain the transmission facilities as if those facilities had been transferred in fee simple. The transfer of the transmission assets will be subject to the approval of the relevant retail regulatory commissions, as well as to the terms of existing franchises, utility mortgages, right-of-way grants and similar relevant obligations.\(^\text{14}\)

\(^{14}\) If the relevant transmission facilities are transferred to the Transco, Entergy intends to transfer the transmission assets at net depreciated book value. The only circumstance that will drive Entergy to deviate from this transfer price is if a state public service commission or other governmental agency did not recognize this proposed transfer price for retail ratemaking or other purposes. If this occurs, which Entergy does not expect, then Entergy will seek a rate base adjustment to FERC jurisdictional rates to reflect the value used for retail ratemaking purposes.
Entergy expects the Transco to control and operate more than the transmission facilities of the Operating Companies. An important goal of the Transco proposal, which the Commission can greatly facilitate by issuing this declaratory order, is to convince other transmission-owning entities to join the Transco so that the Transco can control transmission assets covering as large a region as possible. Indeed, Entergy believes that it is important to the success of the Transco that it bring as many transmission-owning entities as possible on board with it during the initial formation stage. The method of transferring assets to the Transco could have significant tax implications to many transmission-owning entities. Therefore, preserving the flexibility for transmission owners to transfer their assets (or rights therein) to the Transco either through a fee simple transfer, a lease or a contribution will maximize Entergy's ability to convince a large number of other transmission-owning entities to become members of the Transco. Thus, the other Member Companies who join the Transco will be able to commit their transmission assets to the Transco using the same alternatives as the Entergy Operating Companies.

Those other entities who transfer their transmission assets through transfer of ownership, lease or other means, will in return, receive a passive ownership interest in the Transco. All Member Companies will be allocated an interest in the Transco on similar terms, based on the book value of the assets transferred. The Transco will also be able to issue additional interests to raise capital if necessary.
The Transco will also adopt a comprehensive plan for regional planning, including a regional transmission expansion process. Under the plan, the Member Companies will coordinate their System Impact and Facilities Studies and, when appropriate, conduct joint planning studies. Indeed, a centerpiece of this Transco proposal is the annual Regional Planning Summit Process. A description of the annual Regional Planning Summit Process is attached hereto at Appendix 4. This process contemplates that all market participants will participate in a detailed, annual review of the region's resource needs, including proposed transmission expansion plans. The goal of this process will be to identify all potential resource options that can efficiently improve reliability, relieve congestion, and increase regional transactions.

III. ARGUMENT

A. Introduction: Transcos Offer Certain Advantages Over ISOs

The Commission has repeatedly recognized the benefits that independent transmission entities such as ISOs can offer in promoting competition and ensuring reliability of the grid. In Order No. 888, the Commission stated that "ISOs have great potential to assist us and the industry to help provide regional efficiencies, to facilitate economically efficient pricing, and ... to remedy undue discrimination and mitigate market power." Order No. 888 at 31,652; see also id. at 31,655, 31,668. A Transco offers many of the same benefits as ISOs including regional coordination and
independent operation of the grid. Moreover, in certain areas and depending on the circumstances of the particular transmission-owning entity, a Transco is preferable to an ISO.

For example, a Transco will be driven, through appropriate incentives, to minimize costs, maximize throughput, achieve efficient levels of congestion and reliability, and expand the transmission grid when economically justified. Unlike an ISO, this alternative structure will retain the efficiencies gained by integrating the operation of the system with the maintenance, engineering, construction and restoration of that same system. Having the asset management portion of the transmission business working in tandem with, answering to the same management team, and driven by the same incentives as the operational portion of the business, will ensure that the system is operated, maintained, and expanded in the most efficient manner.

Moreover, this approach creates a business that will attract investors, recruit and develop a talented workforce and undertake innovative solutions to ever-changing competitive market developments. Entergy and other supporting stakeholders will aggressively market to other transmission-owning entities the commercial attractiveness of this structure and encourage them to commit their assets and employees to a regional transmission company whose earnings will be driven by performance-based regulation, assuming FERC supports the use of appropriate performance-based ratemaking. The Transco is an important step toward establishing broad regional
electricity markets in an efficient and cost-effective manner. This alternative is a natural stepping stone to an end-state of large, regional independent transmission businesses. To the extent the Commission provides the requested guidance on the Transco proposal, this process will be greatly facilitated.

Having responsibility for the asset management portion of the transmission business function vested in the same entity that operates the grid provides further independence from the interests of the Member Companies. Indeed, in a critical way, removing asset management functions from transmission owners and placing responsibility for them in the independent Transco is an additional level of separation than that found in the ISOs the Commission has approved to date.

Of course, in reviewing a proposal to create an ISO or a Transco, it is not the Commission's role to determine the best solution that could be devised; rather, it is only necessary that the approach chosen is a just and reasonable one. See Midwest ISO, 84 FERC at 62,145. As the following section demonstrates, Entergy's Transco proposal comports with the Commission's applicable ISO principles and accordingly should be found, subject to review of final details and arrangements, to be a just and reasonable approach.

B. This Transco Proposal Satisfies Applicable ISO Principles

In Order Nos. 888 and 888-A, the Commission adopted eleven
principles for evaluating ISO proposals. These principles have been applied by the Commission in its review and approval of all five ISO proposals submitted to date. The principles are intended to provide a "guidepost" for evaluating ISO proposals.

See, e.g., PJM Interconnection, 81 FERC at 62,262. The principles should be applied in a flexible manner in determining whether the ISO proposals meet 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.

Midwest ISO, 84 FERC at 62,142. These principles should also guide the Commission's analysis in evaluating the reasonableness of this Transco proposal and whether the requested declaratory order should be issued.

Therefore, Entergy asks the Commission to declare that the Transco proposal complies with the applicable ISO principles, particularly the principles involving independence and removal of conflicts of interests.

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15 Order No. 888 at 31,730-32; Order No. 888-A at 30,278-79.


17 As noted earlier, the Commission should, as it does with ISO proposals, defer final judgment on the proposal until further details are submitted in the
1. **Principle No. 1: Governance Should be structured in a fair and non-discriminatory manner.**

   Principle No. 1, the independence principle, requires the ISO to be structured independently of any individual market participant or class of market participants. The purpose of this principle is to ensure fair and non-discriminatory access to all transmission services and ancillary services for all users of the system. The independence principle "is the bedrock upon which the ISO must be built if stakeholders are to have confidence that it will function in a manner consistent with the Commission's pro-competitive goals." *Atlantic City*, 77 FERC at 61,574. That principle also has "overarching significance" because "it may affect the ISO's ability to comply adequately with many of the other guiding principles." *Id.*

   In reviewing ISO proposals for compliance with Principle No.1, the Commission orders focus mainly on the procedures and rules governing who exercises control over the ISO's operations and how those who exercise control are selected. The Transco proposal was carefully structured to comply with the Commission's directives and guidance regarding the proper governance and structure for an ISO.
The terms for the governance and structure of the Transco are set forth in the Transco's LLC Agreement that is attached hereto at Appendix 2. As discussed therein, the Transco proposal adopts the "independent" board, rather than the "stakeholder" board model. Under the independent board model, the Transco will be governed by seven independent board members with expertise in the areas necessary to govern an electric transmission company. The independent board approach was accepted by the Commission in the NEPOOL ISO,\textsuperscript{18} the New York ISO,\textsuperscript{19} and the Midwest ISO.\textsuperscript{20}

The independent board members will have no financial ties to the Member Companies. Moreover, the selection process will be designed to ensure that the board members are independent from the Member Companies. Under the selection process: (1) the Member Companies will select a nationally recognized, executive search firm; (2) the search firm will select a slate of qualified board candidates; and (3) either the Member Companies or a Selection Committee of market participants (including the Member Companies) will select the seven board members from the slate. This

\textsuperscript{18} \textit{NEPOOL}, 79 FERC at 62,584-85.

\textsuperscript{19} \textit{Central Hudson}, 83 FERC at 62,409.

\textsuperscript{20} \textit{Midwest ISO}, 84 FERC at 62,148.
process is consistent with the selection process approved by the Commission in the Midwest ISO order.\textsuperscript{21}

The Member Companies (the Entergy Operating Companies and other transmission-owning entities that commit their assets to the Transco) will be passive members of the Transco and will have their limited voting rights spelled out explicitly in the LLC Agreement. The Member Companies will have no control over the day-to-day or long-term operations of the Transco. Rather, the independent board will have that authority. The Member Companies will have the limited ability to request, approve, and vote on certain major corporate transactions, such as dissolution of the Transco, transfer of all or a significant portion of the Transco’s assets, and merger or consolidation. However, to ensure that such authority is not exercised in a discriminatory or unjust and unreasonable manner, the Commission also will have to approve any such potential transaction before it becomes effective.

In reviewing ISO proposals for compliance with ISO Principle No. 1, the Commission has also examined the funding for the ISO. Because ISOs are non-profit entities, the Commission has insisted that the transmission owners not have control

\textsuperscript{21} Midwest ISO, 84 FERC at 62,147. As noted earlier, if the Commission finds that an appropriately structured stakeholder committee is critical to the selection process to ensure the Transco’s independence, Entergy will not oppose such a process.
over the funding of the ISO. The Commission has stated that "it is critical that the ISO be self-funding in order to ensure its independence." *NEPOOL*, 79 FERC at 62,587. Because the Transco will be an incentive-driven company that will be self-funded, this potential obstacle to independence will not arise.

It is true that the Transco could technically be an affiliate of the Member Companies. But it will be an affiliate in name only. Once the Transco is in place, the Member Companies will not exercise control over the operation or management decisions of the regional transmission company. While the Member Companies will hold a passive economic interest in the Transco, they will not control the Transco's actions, and therefore, will not be able to engage in self-dealing. The entity with control -- the Managing Board -- will be completely independent from the Member Companies. The board will have a nominal fiduciary role toward the holders of the passive economic interest, just like an ISO has a fiduciary duty to the transmission owners.\(^22\) Thus, the Transco will behave no more like an affiliate of the Member Companies than an ISO behaves like an affiliate of a participating transmission owner.\(^23\)

\(^22\) See Order No. 888 at 31,731.

\(^23\) Moreover, to prevent even the appearance of control, the name of the Transco will bear no resemblance to any of the Member Companies. This will reduce the possibility of confusion that any Member Company exercises control over the Transco.
2. **Principle No. 2:** An ISO and its employees should have no financial interest in the economic performance of any power market participant. An ISO should adopt and enforce strict conflict of interest standards.

ISO Principle No. 2 requires that the officers and employees of the Transco be financially independent of the transmission owners and all market participants. The Transco proposal satisfies this principle.

Neither the Member Companies, nor any other market participants, will have any influence over how Transco's budget or employees compensation policies. All payroll and budgetary decisions will be made by the Managing Board that will have no ties to any market participant. In addition, compensation will be based solely on the Transco's performance, and the Transco employees will have no financial interest in the economic performance of any market participant.

Moreover, all Transco officers and employees will be required to abide by a Code of Conduct that ensures that those employees will not have any financial stake in the Member Companies nor any other market participants. This Code of Conduct, attached at Exhibit 1 to the Transco's LLC Agreement, fully complies with the requirements of ISO Principle No. 2, including the requirement that all stock be divested within 6 months of Transco operation and prohibition on participation in pension plans, other than defined pension plans, of any market participants. The Code also prohibits the Transco from acquiring from or selling any services to any market participant, including the Member Companies, except at arm's length.
Because the Transco could technically be an affiliate of the Member Companies, the Transco employees will also be required to abide by a Code of Conduct that fully complies with the requirements of Order No. 889. Because the Transco will be controlled by the independent board, not the Member Companies, a Code of Conduct under Order No. 889 should not be necessary. However, by requiring that its officers and employees also comply with Order No. 889, there will be an additional layer of protection.

3. **Principle No. 3:** An ISO should provide open access to the transmission system and all services under its control at non-pancaked rates pursuant to a single, unbundled gridwide tariff that applies to eligible users in a non-discriminatory manner.

ISO Principle No. 3 requires the ISO to provide non-discriminatory, open access service to all eligible users at non-pancaked rates. As discussed above, until further discussions and negotiations take place, it has not been possible to formulate a proposed tariff for the Transco. Rather, the terms of the tariff are expected to be devised through a joint effort among Entergy and the other Member Companies, as well as other stakeholders and state regulatory authorities. Entergy's intent in deferring the development of a proposed tariff is to facilitate bringing together a larger group of Members Companies. Putting forward such a proposal now, on its own, will likely only deter other potential Members Companies from joining if they were not in complete agreement with the tariff proposal. Further, while the pricing provisions and other details of the tariff are unknown at this time, the non-price terms
and conditions will be fully consistent with applicable Commission orders and precedent. Indeed, transferring transmission assets to an independent, fully integrated transmission company provides a sharper and clearer form of unbundling of transmission services than occurs under an ISO. Thus, the proposed tariff will fully comply with Order No. 888's requirements of clarity, open-access, non-discrimination, and comparability and will be superior in terms of a sharper unbundling of transmission services.\textsuperscript{24}

ISO Principle No. 3 also encourages ISO proposals to operate "as large a portion of the grid as possible." Order No. 888 at 31,731; see also Midwest ISO, 84 FERC at 62,145. This principle will be met here. As discussed above, the LLC Agreement will permit and facilitate other transmission companies to join the Transco. Entergy and hopefully other stakeholders will market this proposal to other transmission-owning entities to commit their transmission assets to the Transco.

\textsuperscript{24} Of course, because Entergy is not presenting the Commission with specific tariffs at this time, the Commission can reserve judgment on whether the tariff complies with Principle No. 3. See NEPOOL, 79 FERC at 62,587; see also Central Hudson, 83 FERC at 62,410 (deferring until later orders judgment on whether the tariff provisions of ISO proposals complied with Principle No. 3).
Entergy recognizes that some transmission owners may be reluctant to join this Transco because of a concern that, in order to achieve a single, grid-wide tariff, the embedded cost of all Member Companies' transmission assets will be combined for ratemaking purposes. This possibility could have the effect of averaging the cost of transmission tariffs across the entire region covered by the Transco. In so doing, it could lower the transmission tariff for owners with relatively high-cost tariffs and raise the tariff for owners with relatively low-cost tariffs. The prospect of cost shifting among transmission owners could be a deterrent for transmission owners whose existing tariffs are relatively low-cost. In order to address this concern, Entergy proposes that, in addition to meeting the Commission's existing pricing standards, the transmission proposal developed by Member Companies should not result in cost shifting among transmission owners solely due to the implementation of the Transco. Entergy therefore requests that the Commission recognize this general "no cost-shifting" policy as an acceptable standard for developing independent regional transmission organizations.

Thus, this proposal is intended to result in the creation of a truly regional entity. But even if other companies do not join initially, at a minimum, the Transco will operate all transmission facilities of the Entergy Operating Companies which cover 15,200 miles in four states. In other words, the Transco will be as large as the NEPOOL and New York ISOs.
4. Principle No. 4: An ISO should have the primary responsibility in ensuring short-term reliability of grid operations. Its role in this responsibility should be well-defined and comply with all applicable standards set by NERC and the regional reliability council.

Principle No. 4 requires the ISO to have the primary responsibility for ensuring short-term reliability of grid operations. Ensuring reliability is of critical importance in approving ISO proposals, and the promotion of a reliable transmission system is one of the goals of the ISO principles. See Midwest ISO, 84 FERC at 62,158. Here, the Transco proposal will promote the continued high-reliability of the Member Companies' transmission grid.

The Transco will comply with all applicable reliability standards, just like the Member Companies do today. The Transco will not just oversee maintenance of the transmission facilities, but it will also be responsible for performing the maintenance, security obligations, and transmission planning. Moreover, through the annual Regional Planning Summit Process (Appendix 4), other market participants will have an opportunity to participate in planning the expansion of the transmission system. Finally, the Transco will be responsible for curtailments in times of transmission capacity shortages.

Like the Midwest ISO, the Transco will not have control over generation. Rather, control over generation within the Transco control area will remain with the Member Companies and other generators within the control area that are not Member Companies. However, this should not preclude compliance with Principle No. 4 just
like it did not preclude compliance in the case of the Midwest ISO. This is because the Transco "will possess authority over generation to the extent that generation affects transmission." *Midwest ISO*, 84 FERC at 62,159.

Moreover, through its Transco proposal, the Member Companies will abide by the two conditions that the Commission imposed in the Midwest ISO order. *See id.* at 62,159-60. That is, before transferring control to the Transco, the Member Companies will provide a detailed summary of the procedures governing the Transco's exercise of operational control over the transmission facilities and the procedures for responding to emergencies. These procedures will be developed through a process that permits input from market participants. Also, the Transco's monitoring plan will include ongoing monitoring of the reliability effects of keeping control of generation with the Member Companies. In addition to ongoing monitoring, no later than 18 months after operation, the monitor will submit a report on the reliability impacts of keeping generation control with the Member Companies.

With these safeguards, the reliability of the transmission grid will not be compromised, and ISO Principle No. 4 is satisfied.

5. **Principle No. 5: An ISO should have control over the operation of the interconnected transmission facilities within its region.**

This Transco proposal fully comports with ISO Principle No. 5. The Transco will have control over the operation of the interconnected transmission facilities within its region. The Transco will initially assume control over all the transmission
facilities owned by the Member Companies and transferred to the Transco. Moreover, under the LLC Agreement, the Transco will have the ability to exercise control over other facilities owned by the Member Companies that are deemed necessary for the reliable operation of the transmission system. *See, e.g.*, *Central Hudson*, 83 FERC at 62,414.

Additionally, the Member Companies will be required to make filings with applicable state regulatory agencies defining the transmission facilities that will be transferred to the Transco.

6. **Principle No. 6:** An ISO should identify constraints on the system and be able to take operational actions to relieve those constraints within the trading rules established by the governing body. Those rules should promote efficient trading.

ISO Principle No. 6 requires the ISO to identify and remedy system constraints efficiently and effectively. An important goal of ISO Principle No. 6 is to encourage ISOs to allocate scarce capacity in a way that "promotes efficiency in the market place." *Midwest ISO*, 84 FERC at 62,163 (citing Order No. 888 at 31,730-32). Principle No. 6 also requires that the ISO provide ancillary services.

The Member Companies will submit a proposal that satisfies ISO Principle No. 6. Although a specific congestion management proposal has not yet been devised, the Member Companies and other stakeholders will formulate an appropriate congestion management scheme. In addition, long-term solutions to constraints can be resolved through the annual Regional Planning Summit Process, discussed above.

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The Transco will also take responsibility to see that ancillary services are provided, just as the Member Companies provide those services under their Open Access Transmission Tariffs. The Commission can review the specific aspects of the Transco's procedures for relieving constraints and provision of ancillary services when it examines the Transco's tariff in the subsequent section 205 proceeding. See NEPOOL, 79 FERC at 62,588; Central Hudson, 83 FERC at 62,415.

7. **Principle No. 7:** The ISO should have appropriate incentives for efficient management and administration and should procure the services needed for such management and administration in an open, competitive market.

The Transco proposal also satisfies ISO Principle No. 7. The Managing Board will be responsible for ensuring the efficient management and administration of the system and will develop appropriate incentives and file them with the Commission. See, e.g., NEPOOL, 79 FERC at 62,588-89; Central Hudson, 83 FERC at 62,415. Moreover, the LLC Agreement expressly precludes the Transco from purchasing services or products from the Member Companies except in an open and competitive market. *Id.*

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25 The Transco may receive a very limited amount of after the fact accounting, tax and finance services from the Entergy Operating Companies or other Entergy subsidiaries. These limited services are those that will be necessary because Entergy's ownership interest in the Transco will continue to be included on Entergy's financial disclosure documents and its consolidated tax return. By its nature, the information the Transco will receive will not be transmission-related information. Thus, none of the services will relate in any way to the provision, scheduling, or planning of any transmission or
ancillary service. Other Member Companies may provide similar services to the Transco. Any other services that the Transco may require from an external source will be obtained through arm's length negotiations.
8. **Principle No. 8:** An ISO's transmission and ancillary services pricing policies should promote efficient use of and investment in generation, transmission, and consumption. An ISO or a RTO of which it is a member should conduct such studies as may be necessary to identify operational problems or appropriate expansions.

As discussed above, the Transco's pricing provisions have yet to be determined. Therefore, Entergy is not, of course, asking for approval of the pricing provisions of the tariff at this time. The Commission can address pricing issues when the tariff is submitted to the Commission for approval under section 205. *See, e.g.*, NEPOOL, 79 FERC at 62,589; Central Hudson, 81 FERC at 62,415. Because the Transco's tariff will be filed with the Commission, any subsequent changes to the pricing provisions will be subject to approval by the Commission.

At this juncture, Entergy will propose to other potential Member Companies that the Transco's rates will be incentive driven by using some form of performance based ratemaking ("PBR"). This PBR will incent the Transco to maximize throughput, relieve congestion, and enhance reliability. Developing the precise PBR proposal -- including how it will affect both transmission users and the Transco -- will be done when the section 205 filing is made.\(^{26}\) However, to the extent the Commission could provide guidance on whether and under what circumstances it will permit PBR style incentive regulation of the type described herein it will be very useful and beneficial.

\(^{26}\) At this juncture, Entergy is not contemplating any other type of "incentive" ratemaking proposal.
in Entergy's discussions with other transmission owners and stakeholders. A positive
nod from the Commission at this time will, in Entergy's view, greatly facilitate the
formation of regional transmission entities.

Principle No. 8 also requires the ISO to identify operational problems and
expansions. The Transco proposal comports with this aspect of Principle No. 8. The
Transco will have a "clear and prominent role"\textsuperscript{27} in regional transmission planning
decisions. As an entity with a direct financial stake in the operation of the system, the
Transco will have the financial incentive to make sure that adequate transmission
facilities are planned and constructed to allow for the efficient and reliable transmis-

\section{Principle No. 9: An ISO should make transmission system
ingformation publicly available on a timely basis via an electronic information
network consistent with the Commission's requirements.}

Under the Transco proposal, the Transco will set up an OASIS consistent with the requirements of Order No. 889.\textsuperscript{28} This will fully comply with ISO Principle No.

\textsuperscript{27} Pacific Gas and Elec. Co., 77 FERC at 61,835.

\textsuperscript{28} Open Access Same-Time Information System and Standards of Conduct,
9. See, e.g., *PJM Interconnection*, 81 FERC at 62,269; *Central Hudson*, 83 FERC at 62,415.

10. **Principle No. 10:** An ISO should develop mechanisms to coordinate with neighboring control areas.

    Under the Transco proposal, the Transco will adopt the existing contractual obligations related to coordination of the Entergy Operating Companies with the neighboring control areas as well as the existing contractual obligations of other Member Companies. Moreover, the Transco will enter into contracts with other neighboring control areas as necessary. This will fully comply with ISO Principle No. 10. See, e.g., *Pacific Gas and Elec. Co.*, 81 FERC at 61,460; *PJM Interconnection*, 81 FERC at 62,269; *Central Hudson*, 83 FERC at 62,415.

11. **Principle No. 11:** An ISO should establish an ADR process to resolve disputes in the first instance.

    The Transco's LLC Agreement and Open Access Transmission Tariff will contain an ADR provision prescribing ADR procedures similar to those in the Commission's *pro forma* Open Access Transmission Tariff. Moreover, any ADR decisions involving the Transco will be filed with the Commission. This will fully satisfy ISO Principle No. 11. See *PJM Interconnection*, 81 FERC at 62,269-70; *Atlantic City*, 77 FERC at 61,581.

**IV. NOTICES AND COMMUNICATIONS**

Communications regarding this Petition should be sent to:
V. CONCLUSION

For the foregoing reasons, Entergy respectfully requests an order declaring that Entergy's Transco proposal complies with the applicable ISO principles and is otherwise in the public interest. Entergy also respectfully requests that the Commission issue the requested declaratory order by the end of July 1999.

Respectfully Submitted,

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Date: April 5, 1999